UNITED STATES CUSTOMS COURT REPORTS

VOLUME 72

CASES ADJUDGED IN THE
UNITED STATES CUSTOMS COURT

January-June 1974

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v. 72

UNITED STATES CUSTOMS COURT

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[1] Entered on duty April 1, 1974.

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Customs

(C.D. 4497)

DITBRO PEARL CO., INC. *v.* UNITED STATES

Ladies' belts (chain)

Assorted styled so-called chain belts of a decorative style and kind worn by women around the waist or hips in fashionable dress are properly classifiable as "Jewelry and other objects of personal adornment * * *" dutiable under TSUS item 740.38, as classified by customs, rather than as "Chain and chains * * *" dutiable under item 652.38 as plaintiff claims, or "Articles of aluminum * * *" dutiable under item 657.40, as alternatively claimed by plaintiff.

An abstracted Bureau decision published in the Customs Bulletin on the classification of ladies' aluminum chain belts under TSUS item 652.38, by itself, is not a finding of a uniform established practice requiring a notice of change under section 315(d), Tariff Act of 1930, as amended, 19 U.S.C. § 1315 (with respect to the classification of ladies' decorative chain belts under TSUS item 740.38) and is not binding on this court. Cf. *Venetianaire Corp. of America* v. *United States*, 60 CCPA 75, C.A.D. 1084 (1973).

Court No. 71-5-00113

Port of New York

[Judgment for defendant.]

(Decided January 16, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel); *Rode & Qualey* (*John S. Rode* of counsel) associate counsel; for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

LANDIS, Judge: This case involves the tariff classification of merchandise consisting of six assorted styled so-called chain belts imported from West Germany and entered at New York on January 8, 1970. The chain belts, finished in gold color and concededly in chief value of aluminum not coated or plated with precious metal (exhibit 1), are of a decorative style and kind worn by women around the waist or hips in fashionable dress.

Defendant (the government) classified the chain belts under the TSUS (Tariff Schedules of the United States) heading, "Jewelry and other objects of personal adornment * * *," item 740.38, dutiable at 38 per centum ad valorem.

Plaintiff contends, as appears from the complaint: (1) that the chain belts should have been classified under the TSUS heading, "Chain and chains * * *," item 652.38, dutiable at 13 per centum ad valorem; (2) that the chain belts should alternatively have been classified under the TSUS heading, "Articles of aluminum, not coated * * *," item 657.40, also dutiable at 13 per centum ad valorem; (3) that the chain belts should have been classified under TSUS heading heretofore claimed, viz: 652.38 because of an established and uniform practice in effect at the time of importation under which ladies' aluminum belts consisting of a length of aluminum chain with a small brass hook attached to one end of each length were classified under said item 652.38, and which established and uniform practice had not been changed as provided by section 315, Tariff Act of 1930, as amended.[1]

The pertinent headnotes and applicable sections of TSUS under which the merchandise was classified are as follows:

SCHEDULE 7. – SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Part 6. – Jewelry and Related Articles; Cameos; Natural, Cultured, and Imitation Pearls; Imitation Gemstones; Beads and Articles of Beads

* * * * * * *

Subpart A. – Jewelry and Related Articles

Subpart A headnotes:

1. This subpart covers *jewelry and other objects of personal adornment*, small articles ordinarily carried in the pocket, in the handbag, or on the person for mere personal convenience, certain religious articles, and certain parts and ma-

[1] Section 315(d) provides as follows:

(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties. * * *

terials. This subpart does not cover—[Emphasis added.]

(i) luggage (see part 1D of this schedule),
(ii) watches (see part 2E of this schedule),
(iii) brushes (see part 8A of this schedule),
(iv) cigar or cigarette lighters or articles in which cigar or cigarette lighters are incorporated as integral parts (see part 9B of this schedule),
(v) pens or pencils (see part 10 of this schedule),
(vi) hand fans (see part 13A of this schedule), or
(vii) manicure implements, pocket knives, and similar articles (see part 3E of schedule 6).

2. For the purposes of this subpart—(a) the term "jewelry and other objects of personal adornment" (items 740.05 through 740.38), includes rings, ear-rings and clips, bracelets (including watch bracelets and identification bracelets), necklaces, neck chains, watch chains, key chains, brooches, tie pins and clips, collar pins and clips, cuff links, dress-studs, buttons, buckles and slides, medals, military, fraternal and similar emblems and insignia (including those prescribed for military, police, or other uniforms), fobs, pendants, hair ornaments (including barrettes, hair-slides, tiaras, and dress combs), and similar objects of personal adornment * * *

* * * * * * *

3. Items 740.30 through 740.38 cover articles described in headnote 2(a) of this subpart, except buttons, buckles, and slides, and hair ornaments (see parts 7A and 8A of this schedule).

* * * * * * *

	Jewelry and other objects of personal adornment * * *, and parts thereof:	
* * *	Valued not over 20 cents per dozen pieces or parts	* * *
	Valued over 20 cents per dozen pieces or parts:	
	Watch bracelets:	
* * *	Valued not over $5 per dozen	* * *
* * *	Valued over $5 per dozen	* * *
740.38	Other	38% ad val.

Plaintiff's claimed classification items 652.38 and 657.40 appear in TSUS schedule 6, part 3, subparts F and G. The relationship of subpart A (schedule 7, part 6), *supra*, to subparts F and G is definitively treated in the classification headnotes to items 652.38 and 657.40, in relevant context as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS
Part 3. – Metal Products

Subpart F. – Miscellaneous Metal Products

Subpart F headnote:

1. The provisions of this subpart do not include—
(i) chain or chains provided for in part 6A of schedule 7 [*supra*];

* * * * * * *

Chain and chains, and parts thereof, all the foregoing of base metal not coated or plated with precious metal:

* * * * * * *

* * *	Of copper	* * *
652.38	Other	13% ad val.

* * * * * * *

Subpart G. – Metal Products Not Specially Provided For

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

657.40	Articles of aluminum, not coated or plated with precious metal	13% ad val.

The above TSUS headnotes have the force of law. It is readily apparent, reading the headnotes, that if the imported chain belts are in the tariff sense of TSUS "jewelry and other objects of personal adornment," they cannot be classified, as plaintiff claims, under either item 652.38 or 657.40. Since chain belts are not objects specifically included in the definition of the term "jewelry and other objects of personal adornment," the only issue is whether they are objects of personal adornment similar to those included by specific designation thereof. Cf., *Gallagher & Ascher* v. *United States*, 6 Ct. Cust. Appls. 105, 107, T.D. 35343 (1915).

The evidence in this case consists of testimony [2] and various exhibits.

[2] Four witnesses, all men *inter alia* engaged in marketing women's fashion accessories, including costume jewelry and belts made of different materials, testified for plaintiff. Five witnesses, all women variously employed, testified for defendant.

The exhibits,[3] consisting of various commercial ads promoting the sale of leather belts and chain-type necklaces and belts, establish that there are leather belts "[e]ssential with jeans, trousers, pants of all persuasions" that are ornamented with floral or geometric designs (exhibit 3); chain decorative objects that are worn in the manner of a belt (exhibits A and E); decorative chain objects worn as a necklace (exhibit B); and decorative chain objects that can be worn as a necklace, a bracelet, or in the manner of a belt (exhibits C and D).

All the witnesses testified that the imported chain belts were worn by women, with dresses or pants suits, loosely around the waist or the hips in the manner of a belt. With full styled dresses or blouses, the chain belts can be cinched around the waist in a manner that accentuates the line of a woman's figure.

Plaintiff's witnesses testified that the chain belts are belts and stated that as they are worn in the manner of a belt, they are not objects of personal adornment because they function as a belt to style a dress or a pants suit, or complete an outfit.[4]

Defendant's witnesses also testified that chain belts are fashionable decorative objects but chose to emphasize that they wear their belts in the manner of a belt not to support anything, but merely to achieve what they ascribed would be a "coordinated, polished look"—"a total look"—"to look pretty and brighten up an outfit"—"to dress up an outfit, to add class to the outfit."

A belt is defined in the lexicons as follows:

Webster's Third New International Dictionary, 1968 ed.:

> [A] strip of flexible material (as leather, plastic, cloth) used in a circular form with or without a buckle or other closing and for wear generally around the waist (as a support for trousers, *a decoration for dresses* [emphasis added], or a means of carrying weapons, tools, or ornaments) * * *.

The American Heritage Dictionary of the English Language (1970):

> A band of leather, cloth, or other flexible material, worn around the waist to support clothing, secure tools or weapons, or serve as *decoration.* [Emphasis added.]

The chain objects in this case are of metal material consisting of individual decorative pieces linked together to make them flexible.

---

[3] Collective exhibit 2 is a collection of purchase orders, produced by plaintiff on defendant's subpoena, for chain belts of the kind imported. The business letterheads on a representative number of the purchase orders contain reference to the customers' jewelry business.

[4] The ambiguous tenor in which plaintiff's witnesses testified to the function of belts is pointed up in the cross-examination of plaintiff's witness Weinberger, who testified as follows:

> Q. In your opinion, then, decoration is not the primary object of chain belts, is that correct?—A. That is correct.
>
> Q. What is the primary purpose?—A. The primary purpose is to act as a belt, whatever the function and use of a belt is.
>
> Q. Aren't most women's belts decorative?—A. I cannot say whether most of them are or are not. I would assume that every woman wants to feel whatever she wears is for decorative purposes. [R. 59–60.]

At one end of the chain is a closure hook. The record establishes that in descriptive parlance the objects are chain belts. While I am of the opinion that a chain belt worn around the waist is a belt in the common meaning of the term, it does not follow that the imported chain belts are not articles of personal adornment, similar to the objects specifically included in the statutory definition.

Chain belts, as plaintiff observes, are not specifically included (as are neck chains, watch chains, key chains) in the statutory definition of "jewelry and other objects of personal adornment." There is no gainsaying plaintiff's statement, therefore, that if chain belts are to be included in the definition they must be objects of personal adornment similar to those specifically included. The crunch of those observations is plaintiff's assertion that chain belts are in no way similar to neck chains, watch chains, key chains or any of the other objects specifically included in the definition and, for that matter, that they are not objects of personal adornment except in the same sense as ladies' clothing in general. The assertion appears to be partially woven in argument that chain belts are not *ejusdem generis* with the objects specifically included in the statutory definition.

> *Ejusdem generis* is a rule of construction invoked, where legislative intention is in doubt or beclouded by ambiguity, as an aid in ascertaining the intention of the legislature. It is not invoked to narrow, limit or circumscribe an enactment and never invoked if the intention of the legislature can be ascertained without resort thereto. [*Sandoz Chemical Works, Inc.* v. *United States*, 50 CCPA 31, 35, C.A.D. 815 (1963).]

Plaintiff's argument of the *ejusdem generis* rule is not very clearly developed, and to the extent it is, it is difficult to follow in terms of the law and facts in this case. To merely submit, as plaintiff does, that the imported chain belts are not *ejusdem generis* with jewelry and other objects of personal adornment, because chain belts are manifestly not any of the objects specifically included in the statutory definition, is to unnecessarily and not very convincingly apply the rule to that which is obvious from the facts and unambiguous in the statutory definition. In the follow-up to its next statement "[n]or are they [chain belts] 'similar' objects; nor are they even 'objects of personal adornment' except in the same sense as ladies' clothing in general," plaintiff abruptly turns away from the *ejusdem generis* rule to argument as to the function of the imported chain belts.

Plaintiff purports that the testimony of defendant's witnesses merely implies the chain belts are worn to decorate the clothing in a manner similar "to the use of necklaces, brooches and other articles enumerated" in the statutory definition. Having thus characterized the testimony, plaintiff next says it is clear, however, that neither necklaces

nor brooches can possibly be used for the principal function of a chain belt, namely, to "cinch" the waist in a lady's garment, to give it shape, or to function as a belt. With this background, plaintiff advances the contention that a review of the cases decided under tariff acts (prior to TSUS) involving provisions which were considered in drafting the TSUS schedule for jewelry and related articles,[5] "is persuasive that functional articles such as belts were not intended to fall within the scope of the term 'jewelry and other objects of personal adornment.'" (Plaintiff's main brief, page 26.) [6] Defendant in opposition to those points of plaintiff's brief embellishes its argument of the facts and case decisions with a discussion of the legislative history of the provision for "jewelry and other objects of personal adornment." [7]

Whatever else may be said of plaintiff's stance with regard to the function of the imported chain belts and case decisions under prior tariff acts distinguishable from TSUS (see, *United States* v. *Astra Trading Corp.*, 44 CCPA 8, 14, C.A.D. 627 (1956)), it suffices here to say that the court is not required to give opinions on abstract propositions not supported by the evidence in the case, *Brooks* v. *Marbury*, 24 U.S. 78, 94 (1826); *Sullivan* v. *Iron Silver Mining Company*, 109 U.S. 550, 554 (1883). Plaintiff's statement that these imported chain belts are functionally dissimilar objects from those specifically included in the statutory definition is not, in my opinion, supported by the evidence in the case.

Contrary to what plaintiff says about the implications of defendant's testimony, the weight of all the testimony (including the testimony of plaintiff's witnesses) preponderantly establishes that women wear the imported chain belts around the waist or hips and that so worn the chain belts are decorative and personally adorning. The chain belts in evidence bear potent witness to their decorative and adorning character. None of the rings, earrings, etc. included in the statutory definition of "jewelry and other objects of personal adornment" have any related function to each other that I can discern. It is immaterial, therefore, that the rings, earrings, etc. included in the definition cannot be cinched around the waist in the manner of a belt, to give style or shape to a lady's garment. Style, shape, "to complete a garment," terms which plaintiff's witnesses chose to express their opinions on the function of the imported chain belts are handmaidens of the same personal adornment that defendant's witnesses testified to in more colorful personal terms. Men wear tie pins and clips for no less reason, than women wear chain belts, to add to their style and to complete their outfit. In short, none of the expressed functions of these chain belts,

[5] Tariff Classification Study, Schedule 7, page 320.
[6] Plaintiff also filed a reply brief.
[7] Tariff Classification Study, n. 5.

in the manner they are worn around the waist and hips, are inconsistent with their obvious character as objects of personal adornment. Substantively, therefore, I find that the evidence supports the presumption of correctness attaching to the customs classification of the imported chain belts as "jewelry and other objects of personal adornment" under TSUS item 740.38.

What remains for consideration is plaintiff's claim that the classification of the chain belts as "jewelry and other objects of personal adornment" represented a change in a prior uniform and established practice classifying chain belts as chains under item 652.38, done without notice in violation of section 315(d) of the Tariff Act of 1930, as amended.[8]

The threshold question under section 315(d) is whether the Secretary of the Treasury or his representative found an applicable established and uniform practice classifying the imported chain belts under TSUS item 652.38. Cf. *Commonwealth Oil Refining Company, Inc.* v. *United States*, 60 CCPA 162, C.A.D. 1105 (1973). What plaintiff cites and relies on as such a finding is one of twenty-one "abstracts of Bureau of Customs decisions of general interest * * * published as a matter of information and guidance" in the volumes entitled Customs Bulletin, which reads as follows:[9]

> T.D. 68–77(3) *Chains of base metal. Chain belts.*—Aluminum ladies belts, consisting of 36 inch lengths of aluminum chain with a small brass hook attached to one of each length, classifiable under the provision for Chain and chains * * * of base metal not coated or plated with precious metal: * * * Other, in *item 652.38*, TSUS. Bureau letter dated February 19, 1968. * * *

Notwithstanding the decision in *Borneo Sumatra Trading Co., Inc.* v. *United States*, 56 Cust. Ct. 166, 173, C.D. 2624 (1966) (holding that an abstract of an unpublished Bureau decision, published in the volumes entitled "Treasury Decisions," is not a decision, does not establish a uniform practice, and requires no notice of change in practice),[10] plaintiff submits that the abstracted Bureau decision T.D. 68–77(3), *supra*, is precisely the type of finding Congress was referring to when it adopted section 315(d).

T.D. 68–77(3) represents one of twenty-one Bureau decisions abstracted under T.D. 68–77. Abstracted Bureau classification decisions are frequently published in the weekly "Customs Bulletin," a new title for the publication previously known as the "Weekly Treasury Decisions." (See, 1 Customs Bulletin 1, T.D. 67–1.) The Bureau classification decisions so abstracted literally number in the hundreds in a

[8] N. 1.

[9] 2 Customs Bulletin 157, T.D. 68–77 (1968).

[10] Plaintiff is of the opinion that the court of appeals in *Asiatic Petroleum Corp.* v. *United States*, 59 CCPA 20, C.A.D. 1029 (1971), implicitly overruled *Borneo Sumatra.*

period of months. Plaintiff cites no case and I find none which sustains the general proposition that the mere publication of a Bureau abstracted decision on the classification of merchandise establishes a uniform practice for classifying the merchandise and requires a subsequent notice under section 315(d) if the practice is to change. The regularity with which such abstracted decisions are published and the lack of litigation, except for *Borneo Sumatra*, *supra*, would seem to reflect a consensus, at least among those engaged in customs matters, that the general proposition contended for by plaintiff is not sustainable.

Plaintiff's contention, it will be noted, concerns an established practice in the statutory sense that it cannot be changed without due notice under section 315(d). Section 315(d) requires a notice only when there is an "administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice."

Plaintiff, in pressing its contention, rests its case on the statement that "the formal classification rulings [i.e. abstracted Bureau decisions] of the Bureau of Customs are precisely the type of 'findings' to which Congress was referring when it adopted section 315(d)." (Plaintiff's main brief, page 38.) But, cf. *United States* v. *S. Shapiro & Sons*, 24 CCPA 343, 348, T.D. 48771 (1937) (holding that the abstracted decision in T.D. 46106(4), 63 Treas. Dec. 70, that certain rags contain no mingled quantities of paper stock segregable under section 508 of the 1930 Tariff Act, was "without warrant of law and of no binding force insofar as it in effect attempts to classify merchandise before importation regardless of the actual facts with reference thereto."). There is, however, nothing cited to support plaintiff's statement and quite obviously, by itself, abstracted decision 68–77(3) conveys no clear impression that it is intended as a "finding" of an established practice or "ruling" establishing a uniform practice. Cf. *Asiastic Petroleum Corp.* v. *United States*, 59 CCPA 20, C.A.D. 1029 (1971); *Martin Brokerage Company* v. *United States*, 36 Cust. Ct. 35, 39, C.D. 1750 (1956). Most recently the court of appeals held a 1963 Bureau ruling, abstracted as T.D. 56102(10), 99 Treas. Dec. 65, with respect to the classification of plastic mattresses and pillow covers, "*not* binding on the court" (emphasis added), and "patently insufficient to establish that there had been any long-standing practice" with regard to the classification of the plastic covers at the time of importation in 1963. *Venetianaire Corp. of America* v. *United States*, 60 CCPA 75, 75, 78, C.A.D. 1084 (1973).

For the reasons herein discussed, plaintiff's action is dismissed.

Judgment will enter accordingly.

(C.D. 4498)

DOUGLAS AIRCRAFT CO. *v.* UNITED STATES

Opinion and Order on Defendant's Motion for Judgment on the Pleadings and Plaintiff's Cross-Motion for Summary Judgment

Court No. R70/4122

Port of Detroit

[Defendant's motion denied; plaintiff's cross-motion granted.]

(Dated January 28, 1974)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the defendant.

WATSON, Judge: This case involves a portion of an airplane which was sent out of the United States for further processing in Canada and then imported. The district director at the port of Detroit found the value of the processing subject to duty to be $285,552 net packed pursuant to item 806.30 of the Tariff Schedules of the United States in conjunction with headnote 2 of schedule 8, part 1, subpart B of said tariff schedules.[1] Included within the $285,552 assessed value of processing was the amount of $49,972 as the pro-rata share of Canadian made tooling furnished to the Canadian processor by the importer.

Plaintiff claims the cost of the tooling should not be included in the appraised value of the processing of the imported merchandise.

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[1] Item 806.30:

Any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing	A duty upon the value of such processing outside the United States (see headnote 2 of this subpart)

Headnote 2 of schedule 8, part 1, subpart B:

2. *Articles repaired, altered, processed, or otherwise changed in condition abroad.*—The following provisions apply only to items 806.10, 806.20 and 806.30:

(a) The value of repairs, alterations, processing, or other change in condition outside the United States shall be—

(i) the cost to the importer of such change; or

(ii) if no charge is made, the value of such change, as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 or 402a of this Act.

Defendant has moved for judgment on the pleadings pursuant to rule 4.9 of the rules of this court asserting that, even if the allegations of plaintiff's complaint are accepted as true, defendant should prevail as a matter of law. Defendant bases its assertion on its view that the costs of tooling are, as a matter of law, properly included in the costs of processing under the aforementioned headnote 2.

Plaintiff has cross-moved for summary judgment asserting that there are no issues of fact in this case and the cost of processing under the statute and case law does not include the cost of tooling.

After reviewing the pleadings, statutes and case law, I am led to conclude that plaintiff's position is correct in this matter. For this reason, it is appropriate to deny defendant's motion for judgment on the pleadings and grant plaintiff's cross-motion for summary judgment.

I consider the circumstances in this case to be directly analogous to those in so-called "separable" appraisements, which involve situations where a single element of the appraised value is isolated and placed in issue. Frequently, this element is an amount claimed to be a buying commission. Here it is an amount attributed to tooling. In either event the sole question is the propriety of including the disputed separable amount in the appraised value and the outcome is either the reduction of the appraised value to the undisputed amount or the retention of the disputed amount in the appraised value.

Here the disputed amount is $49,972 for tooling which the importer evidently furnished to the processor to enable it to perform the required processing. The disputed amount was isolated by an interrogatory directed to defendant which reads as follows:

> Please state the amount of the pro-rata share of Canadian made tooling furnished to the Canadian processor which was included in the value of the processing as found by the District Director for the merchandise covered by the above entitled appeal for re-appraisement.

The undisputed facts in this case are that an amount for tooling supplied by the importer was included in the appraised value of the importation. This leaves only the legal question of whether this inclusion was proper.

In light of the decision in *National Tube Company* v. *United States*, 28 Cust. Ct. 603, Reap. Dec. 8107 (1952), and in keeping with my own understanding on the subject, I conclude that the cost of tooling ought not to be included in the value of processing.

In the *National Tube* case, in a fact situation virtually indistinguishable from that herein, the appellate term of this court held that tooling supplied to a foreign processor for the purpose of making alterations was not part of the value of the alterations under paragraph 1615(g)

of the Tariff Act of 1930, as amended by the Customs Administrative Act of 1938. There the importer supplied specially designed gripping jaws to the foreign processor to enable it to utilize its stretching machine on the importer's pipes. A charge for the use of the stretching machine was made in that instance and the court referred to the charge alone as entering into the value of the alteration. The court reasoned as follows:

> * * * Clearly, the value of the stretching machine owned by the Aluminum Co. of Canada or the value of any parts specially supplied therefor, in order to adapt such machine to undertake the alteration for which the casings were shipped to Canada, does not bear any relation to the value of the repairs or alterations. However, a charge for the use of the stretching machine, which would necessarily include a charge for the installation and use of the parts specially designed to hold the casing while being stretched, would enter into such value. * * * It would be inconsistent for the court to hold that the grip jaws with accessories and the aluminum plugs specially supplied for use upon the stretching machine were a part of the value of the alterations without holding that the stretching machine itself was also a part of such value, inasmuch as both the machine and the parts equally entered into the operation of stretching the pipe. One might go so far along such line of reasoning as to consider that the factory building in which the machine was housed also entered into the value of the stretching machine. All that could possibly become a part of the value of the altered goods would be a charge for use of the machinery. The ownership of the machine or any part thereof is entirely immaterial. [28 Cust. Ct. at 606.]

I find the similarities of the *National Tube* case striking and the dissimilarities inconsequential. As here, an attempt was made by the appraising official to incorporate an amount attributable to the tooling in the appraised value. As here, the supplied tooling was made in Canada. As here, the tooling was not incorporated in the imported article but merely utilized in performing the desired work. As here, a charge for the alteration was made which in itself was not placed in dispute but seemingly only deemed unsatisfactory by the appraising official for its failure to include the disputed cost of tooling.

Admittedly, the current statutory language differs somewhat from the language involved in the *National Tube* case. However, the transition from the "value of alteration" to the "value of processing" is a natural one without the intrusion of any new distinctions or meanings and the insights gained from the old language seem equally valid at present.

It seems obvious to me that in introducing the explanatory headnote 2, *supra*, in the tariff schedules, an attempt was being made to clarify the value of processing in light of past experience and law;

not to develop a procedure whereby all costs associated with processing are incorporated into the value of the processing. Thus, the headnote definition of the value of processing as the "cost to the importer" I take to mean simply the amount charged by the processor. The immediately following reference to the possible circumstance "if no charge is made * * *" reinforces my view that the previous mention of "cost to the importer" was meant to be the amount charged to the importer.

I have no doubt the headnote could be more clearly phrased but nevertheless its most straightforward interpretation is that in the absence of extraordinary circumstances, the value of processing is the amount charged for said processing. The primary statutory language is "value of such processing." I take this to mean the value derived in the most limited and straightforward manner possible and not a makeshift version of cost of production. If, indeed, the appraising official does resort to the conventional valuation provisions because of a disbelief in the reasonableness of the charges, he must still utilize those provisions in a manner which correctly expresses the value he is seeking. In this instance the cost of tooling should not enter into the value of processing.

Finally, I fail to see any relevance in whether the tooling was supplied with or without charge to the Canadian processor. Defendant has noted its denial of plaintiff's allegation that the tooling was supplied without charge and asserted that a factual issue which precludes summary judgment is thus raised. However, even if plaintiff did not supply the tooling without charge, I see no way in which this detracts from plaintiff's position on the value of processing. If anything, the fact that plaintiff received income from supplying tooling to the processor would lower the cost to the importer of the processing and justify a lower appraised value.

Both parties have made reference to section 10.8(1) of the United States Customs Regulations which reads as follows:

> *10.8 Articles exported for repairs, alterations, or processing.*
>
> * * * * * * *
>
> (1) Collectors shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the repairs, alterations, or processing. The cost or fair market value, as the case may be, of the repairs, alterations, or processing outside the United States which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under item 806.20 or item 806.30, shall be limited to the cost or value of the repairs, alterations, or processing actually performed abroad and shall not include any of the expenses incurred in this country, whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs, alterations or processing abroad, or otherwise.

In light of my view concerning the statute and in conformity to the holding in the *National Tube* case, a distinction between tooling expenses incurred in the United States and those incurred outside the United States is unjustified. The regulation of course must conform to the statute, not *vice versa*.

For the reasons set out above, it is hereby

ORDERED that defendant's motion for judgment on the pleadings in its favor be, and the same hereby is, denied, and it is further

ORDERED that plaintiff's motion for summary judgment be, and the same hereby is, granted and that the proper value of the processing at issue herein is the appraised value less the sum of $49,972.

(C.D. 4499)

WEDEMANN & GODKNECHT, INC. *v.* UNITED STATES

Rayon yarn

This action involves the question of authority to file a protest, the merits having been previously determined in favor of plaintiff in *Wedemann & Godknecht, Inc., a/c Burlington Industries, Inc., et al.* v. *United States*, 59 Cust. Ct. 475, C.D. 3199, 275 F. Supp. 1017 (1967), *held* protest sufficient to grant court jurisdiction.

The statutory provisions were intended to protect the Government from losing revenue by having to locate the actual importer or party in interest. In the instant case the duty has been paid and the only issue is who has the right to protest. That right should not be curtailed on a technicality when the consignee and its principals are in agreement as to the filing of a protest and the consignee has ratified the act of Wedemann & Godknecht, Inc. in filing the same.

United States Customs Court, Second Division

Protests 62/10344, etc., against the decision of the collector of customs at the port of Philadelphia

[Judgment for plaintiff.]

Decided on rehearing [C.D. 4075] January 30, 1974

Rode & Qualey (*Ellsworth F. Qualey* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Herbert P. Larsen* and *Saul Davis*, trial attorneys), for the defendant.

Before RAO, FORD and NEWMAN, Judges

FORD, Judge: The cases listed in schedule "A," annexed hereto and made a part hereof, cover offgrade filaments. The merit of the issue was decided favorably for the plaintiff in the case of *Wedemann &*

Godknecht, Inc., a/c Burlington Industries, Inc., et al. v. *United States*, 59 Cust. Ct. 475, C.D. 3199, 275 F. Supp. 1017 (1967). In addition, the court ordered further testimony to be adduced relating to the question of the authority to file a protest.

After a further hearing, the court granted defendant's motion to dismiss on the ground that Wedemann & Godknecht, Inc. did not act as agent of Allen Forwarding Co. but for the actual owner, and accordingly the doctrine of ratification was inapplicable. *Wedemann & Godknecht, Inc.* v. *United States*, 65 Cust. Ct. 177, C.D. 4075 (1970).

Plaintiff thereupon moved to take the testimony of the foreign seller and Wedemann & Godknecht, Inc. The motion was granted, additional evidence was adduced, and the matter submitted for decision on the sole issue of jurisdiction.

The record establishes the involved merchandise was sold by Farbenfabriken Bayer, A.G. of West Germany, hereinafter referred to as "FFB," to Atwater Throwing Co. and Liberty Fabrics of New York on a duty-paid delivered basis. Wedemann & Godknecht, Inc., customhouse broker for FFB, was authorized to make all customs entries for clearance and delivery at New York. It was also authorized to employ customhouse brokers at ports other than New York for entry, clearance and delivery. Allen Forwarding Co. was hired by Wedemann & Godknecht, Inc. for the purpose of entering and clearing the involved merchandise at the port of Philadelphia, Pennsylvania. All papers were forwarded by Wedemann & Godknecht, Inc. to Allen Forwarding Co. Entries in the involved cases were made in the name of Allen Forwarding Co., naming as the ultimate consignee either Atwater Throwing Co. or Liberty Fabrics of New York. However, no owner declaration or superseding bond was filed within the time prescribed by section 485(d), Tariff Act of 1930. The duties were paid by Allen Forwarding Co. for which it was reimbursed or payment was received in advance from Wedemann & Godknecht, Inc. These sums were in turn reimbursed by FFB. Upon liquidation of these entries, Allen Forwarding Co. notified Wedemann & Godknecht, Inc. who in turn advised the attorneys, pursuant to an agreement with FFB, to file protests.

Protests were filed in the name of Wedemann & Godknecht, Inc. for the account of Atwater Throwing Co. or Liberty Fabrics of New York.

Additionally the testimony identified George H. McFadden, named on the Special Customs Invoice, Customs Form 5515, as the sales agent in the United States for FFB.

The statutory provisions involved provide as follows:

Tariff Act of 1930, as amended:

SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.

Except as provided in subdivision (b) of section 516 of this Act (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation. [19 U.S.C.A. § 1514.]

SEC. 483. CONSIGNEE AS OWNER OF MERCHANDISE

For the purposes of this title—

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof. [19 U.S.C.A. § 1483.]

SEC. 484. ENTRY OF MERCHANDISE.

(a) REQUIREMENT AND TIME.—Except as provided in sections 490, 498, 552, and 553 and in subdivision (j) of section 336 of this Act, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of

destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time.

* * * * * * *

(h) ENTRY ON CARRIER'S CERTIFICATE.—Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, may make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 483.

(i) ENTRY ON DUPLICATE BILL OF LADING.—Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 483, except that such person shall make such entry in his own name, [19 U.S.C.A. § 1484.]

* * * * * * *

SEC. 485. DECLARATION.

* * * * * * *

(d) LIABILITY OF CONSIGNEE FOR INCREASED DUTIES.—A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee. [19 U.S.C.A. § 1485.]

* * * * * * *

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) POWERS OF SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law, and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry, and may direct any appraiser, deputy appraiser, assistant appraiser, or examiner of merchandise to go from one port of entry to another for the purpose of appraising or assisting in appraising merchandise imported at such port. [19 U.S.C.A. § 1502.]

It stands unrebutted that Allen Forwarding Co. is the consignee and sole owner of the imported merchandise in the tariff sense, as set forth in section 483(1), *supra*. This is true for tariff purposes, notwithstanding the fact that said consignee indicated it was not the actual owner

since there was a failure to comply with the provisions of section 485 (d), *supra*, the filing of an owner's declaration and superseding bond within the time prescribed. *Top Form Brassiere Mfg. Co., Ltd.* v. *United States*, 68 Cust. Ct. 288, R.D. 11770, 342 F. Supp. 1167 (1972); *T. W. Holt & Company* v. *United States*, 28 Cust. Ct. 504, Abs. 56756 (1952); *M. M. Du Pouey* v. *United States*, 48 Cust. Ct. 343, Abs. 66475 (1962). Thus the distinction of ownership in a commercial sense and in a tariff sense becomes apparent.

Likewise, for customs purposes, Allen Forwarding Co. being the owner of the merchandise is in that sense the principal who is duly liable for additional or increased duties as well as the party entitled to any refund if it is determined one is due. However, in a commercial sense, based upon the record Allen Forwarding Co. is merely a nominal consignee for the purpose of making entry and is in fact the agent of Wedemann & Godknecht, Inc., having been employed by the latter for the purpose of making entry. Wedemann & Godknecht, Inc. is the agent of FFB, the manufacturer and shipper who sold the merchandise to the ultimate consignees, Liberty Fabrics of New York and Atwater Throwing Co. on a duty-paid basis.

This matter being tried under the tariff statutes of the United States, we must therefore consider Allen Forwarding Co. as the consignee and actual owner of the merchandise for customs purposes and therefore the principal in this transaction.

Under the general principles of agency, the acts of an agent are the acts of the principal. In the case at bar, the acts of filing the protests involved by Wedemann & Godknecht, Inc. are deemed to be the acts of Allen Forwarding Co. The record does establish that Allen Forwarding Co. has ratified the acts of Wedemann & Godknecht, Inc. in filing the protests. While it is true as pointed out in the prior decision, C.D. 4075, *supra*, that the protests were filed in plaintiff's name for the account of Liberty Fabrics of New York or Atwater Throwing Co. rather than Allen Forwarding Co., the former parties are not for customs purposes those which may file a protest, in the absence of evidence establishing either firm to be the actual importer. The record does not establish the former parties to be actual importers. Accordingly, Allen Forwarding Co. remains the sole owner entitled to file a protest under the provisions of section 514, *supra*. The intent of Wedemann & Godknecht, Inc. was to carry out the orders of FFB to have protests filed so as to protect the right to obtain a refund. The statutory provisions were intended to protect the Government from losing revenue by having to locate the actual importer or party in interest. In the instant case the duty has been paid and the only issue is who has the right to protest. That right should not be curtailed on a technicality when the consignee and its principals are in agreement

as to the filing of a protest and the consignee has ratified the act of Wedemann & Godknecht, Inc. in filing the same. On the merits someone is entitled to a refund and that someone, as far as customs is concerned, is Allen Forwarding Co., the "person" paying the charge. In view of the record in this case, the Government in paying Allen Forwarding Co. will be protected from claims by anyone else.

As the merits of the cases involved have previously been determined in C.D. 3199, *supra*, the claim of the plaintiff that the merchandise is not yarns of rayon or other synthetic textile but is filaments of rayon or other synthetic textile, grouped, weighing less than 150 deniers per length of 450 meters and as such dutiable at the rate of 21 per centum ad valorem, but not less than 17 cents per pound under paragraph 1301, Tariff Act of 1930, as modified by T.D. 54108, is sustained.

Judgment will be entered accordingly.

(C.D. 4500)

JOHN V. CARR & SON, INC. *v.* UNITED STATES

Angles, shapes and sections—Parts of railroad cars

The importations in this case consisted of so-called rail measuring 53 feet in length which in their imported condition were angular in shape, had two curves called stiffening ribs, and had flanges on either end to enable the rail to fit flush with the curvature of a railroad car. After importation, intermediate gussets were welded to the inside of the rail to stiffen it. Also, on occasion, between a half-inch or inch was trimmed off the rail as excess. The imported rails were dedicated for use and used solely as parts of railroad hopper cars. Plaintiff claimed that the imports were properly classifiable as angles, shapes and sections under item 609.80 of schedule 6, part 2 of the tariff schedules. *Held* that the imported rails were properly classified by the government under item 690.35 by virtue of headnote 1(iv) of schedule 6, part 2 of the tariff schedules which provides that "[t]his part does not include * * * other articles specially provided for elsewhere in the tariff schedules, or *parts of articles*." [Emphasis added.]

APPLICABILITY OF HEADNOTE 1(iv) OF SCHEDULE 6, PART 2 OF THE TARIFF SCHEDULES

Headnote 1(iv) excludes from classification under schedule 6, part 2, identifiable parts of an article solely or chiefly used as part of an article provided for, with its parts, in a superior heading of the tariff schedules.

PARTS—MATERIALS

Where an angle, shape or section has been so advanced in manufacture as to have reached a stage at which it is clearly incapable of

being made into more than one article, and only insubstantial processing is required after importation, then the imported item, even though unfinished, is deemed to have been so dedicated to a single use as to fix its status as a part of that article. On the other hand, if in its imported condition, an angle, shape or section has been advanced in manufacture *only* to a point where substantial additional processing is necessary before it can be used as a part of a given article, the importation is not classifiable as a part, but rather would be considered a material and (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections.

Court No. 72–7–01636

Port of Detroit

[Judgment for defendant.]

(Decided February 19, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz and Irving Levine* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

MALETZ, Judge: This action involves the proper tariff classification of articles imported in 1972 from Canada via the port of Detroit that were described on the special customs invoice as cold formed side rails, and on the consumption entry as parts for railway cars.

The goods were manufactured by Canadian Metal Rolling Mills, Ltd., Mississauga, Ontario (hereafter referred to as "Canadian Mills") and imported by ACF Industries, AMCAR Division, Huntington, West Virginia (hereafter referred to as "Amcar"). The plaintiff, John V. Carr & Son, Inc., is a customs broker, agent and attorney in fact for the importer.

The imported articles were assessed by the government under item 690.35 of the Tariff Schedules of the United States, as parts of railroad or railway cars, at 9% ad valorem. Plaintiff contends that the proper classification should be under item 609.80 as steel angles, shapes, or sections, cold formed, weighing over 0.29 pound per linear foot, not drilled, punched or otherwise advanced, and of other than alloy steel, at the rate of 0.1 cent per pound.

The pertinent provisions of the tariff schedules read as follows:

Assessed Under:

Schedule 6, part 6.

690.15	Railroad and railway rolling stock: Passenger, baggage, mail, freight and other cars, not self-propelled	* * *

* * * * * * *

Parts of the foregoing articles:

* * * * * * *

Other:

690.35 Parts of cars provided for in item 690.15, except brake regulators 9% ad val.

Claimed Under:

Schedule 6, part 2, headnote 1.

* * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

Schedule 6, part 2, subpart B, headnote 1.

This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, and in addition covers iron or steel waste and scrap.

Schedule 6, part 2, subpart B, headnote 3.

Forms and condition of iron or steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

* * * * * * *

(j) Angles, shapes, and sections: Products which do not conform completely to the respective specifications set forth herein for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products.

* * * * * * *

Schedule 6, part 2, subpart B.

Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not drilled, punched, or otherwise advanced; sheet piling of iron or steel:

Angles, shapes, and sections:

Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:

Not drilled, not punched, and not otherwise advanced:

609.80 Other than alloy iron or steel ---------- 0.1¢ per lb.

I

We consider first the facts developed in the record.[1] The importer, Amcar, is in the business of building railroad cars and equipment and in this connection uses the imported side rail—which measures some 53 feet in length—as a structural stress carrying member of a railroad hopper car.

The importations—which are manufactured by Canadian Mills in accordance with Amcar's specifications and are not a stock item—are produced from a coil of steel which is fed into a set of three pinch rolls to eliminate the curvature. After this, the sheet metal is fed into a set of guides called a "mill entry." From there, the sheet goes into a continuous production cold roll forming machine—consisting of 15 forming passes—which gradually forms the steel sheet into its final shape. It is then cut off at the end of the line and bundled with other side rails for shipment.

Upon completion of this production process, the side rail is angular in shape; has two curves which are called stiffening ribs; and has flanges on either end to enable the rail to fit flush with the curvature of the railroad hopper car.

When the imported side rail is received by Amcar, the first operation it performs is to weld intermediate gussets to its inside in order to stiffen it.[2] At this point, the imported rail is then transferred to a side blanket assembly line. This blanket assembly is composed of a series of steel sheets, butt welded together, which eventually form the side of the hopper car. The imported rail is welded directly to the top of the blanket assembly. In addition, various appurtenances are tack welded to other parts of the assembly. Parenthetically, it is to be noted that when Amcar starts building the blanket assembly, it does not know what the exact length of the assembly will be and hence it orders from Canadian Mills rail having the maximum length that it believes will be required. Sometimes, however, the length of the rail so ordered is between a half-inch or inch longer than the blanket assembly, in which case Amcar trims the excess off the edge. On the other hand, if the rail is less than a half-inch longer, the excess is regarded as insignificant and is not trimmed off.

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[1] The record consists of the testimony of two witnesses called by plaintiff, the first, John L. Goldie, the vice president and general manager of Canadian Mills, the second, John H. Snyder, the director of purchasing and traffic of Amcar. Both witnesses had academic training in engineering and commercial experience in the steel business. In addition, plaintiff introduced in evidence (1) a number of photographs which showed the imported articles, illustrated their process of manufacture, and showed their use in the manufacture of railroad hopper cars; and (2) a schematic drawing of the hopper car. Defendant did not call any witnesses or present any exhibits.

[2] A gusset is an angular piece of iron used to strengthen angles. See e.g., Webster's *New International Dictionary* (2d. ed., 1958).

Finally, the side blanket assembly, incorporating the imported rail, is welded to the intermediate and end bulkheads of the car and forms the side of the car.

The record further demonstrates that at the time of importation and immediately prior thereto, the imported merchandise was used only for incorporation into railroad stock of the kind described in item 690.15 of the tariff schedules. Also, it is established that the thickness of the imported rails does not vary along the lengths; that they are cold formed items which weigh over 0.29 pound per linear foot; and that they are not drilled, punched or otherwise advanced beyond the cold formed shape. Additionally, it is undisputed that the imported rails are not blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates or tubular products, as defined in schedule 6, part 2, subpart B, headnote 3(j).

In the opinion of the witness Goldie, vice president and general manager of the manufacturer, Canadian Mills, the imported articles are basic steel angular shapes which are symmetrical through their cross section and are rolled as a continuous process. Further, in his opinion, all steel angles, shapes and sections are ordinarily incorporated into other articles; there are very few that are complete for use as they are; and angles, shapes and sections which are drilled, punched or otherwise advanced, are dedicated to use as parts of articles.

The imported rails were identified in the "PARTS LIST" of Amcar's schematic drawing of the hopper car as part No. 92 (side plate). In addition, plaintiff's witness Snyder, the director of purchasing for Amcar, described the imported rail as "an integral part of the car." He further testified that no bending or shaping was performed on the imported merchandise and that that part was merely assembled to the blanket assembly. According to Snyder, the imported articles are not similar to axles or wheels or brake regulators for railway cars since the latter items are classified in the railway car industry as "specialty" parts which are changeable from one car to another. Such specialty parts, he stated, do not become an integral part of the car, as does a structural member such as the imported rail. Continuing, he stated that specialty parts are severable in that they can be removed from the car without damaging it; on the other hand, the imported rail and other integral parts of the car can be removed only by burning them off, thus doing some damage to the car itself.[3]

[3] As pointed out above, the imported rails were identified in Amcar's schematic drawing of the hopper car as parts. Further, Snyder repeatedly testified that the imported rail was an integral part or part of the car. See e.g., tr. pp. 35, 37, 45. In these circumstances, little credence can be given to Snyder's later assertion (tr. p. 59) that only "specialty parts" were considered to be "parts," while "parts for the items that make-up the integral car body itself [including the imported rails]" were *"consider[ed] to be raw material."* [Emphasis added.]

II

Against this background, the question is whether or not the imported rails are "parts of articles" within the meaning of the exclusionary headnote 1(iv) of part 2 of schedule 6.[4] As to this, plaintiff argues (1) that the imported articles are not "parts of articles" within the meaning of the headnote but rather are materials—this on the asserted basis that further processing of the importations is required after importation; (2) that to hold that the importations are parts of articles would render the provision for steel angles, shapes and sections wholly or substantially nugatory; and (3) that the imported articles are steel angles, shapes or sections of the kind intended to be classified under item 609.80. Defendant, on the other hand, contends that since the imported merchandise is specially provided for under item 690.35 as parts of railroad cars, and since headnote 1(iv) of part 2 of schedule 6 precludes the classification under that part of articles specially provided for elsewhere and parts of articles, the imported merchandise, even if it is a basic shape within the ambit of item 609.80, remains classifiable under item 690.35. For the reasons that follow, the court agrees with defendant's position and holds that the imported articles were properly classified by the government under item 690.35 as parts of railroad cars.

III

Directly relevant to the problem here is this court's decision in *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4341 (1972), *aff'd*, 60 CCPA 137, C.A.D. 1098, 477 F. 2d 479 (1973). As this court pointed out (68 Cust. Ct. at 88):

> * * * [P]art 2, subpart B is intended to classify so-called basic shapes and forms of iron or steel, * * *. Schedule 6, part 2, headnote 1(iv), * * * which states that it does not include in any of its subparts, * * * other articles specially provided for elsewhere in the tariff schedules, or parts of articles, is obviously intended to exclude basic shapes and forms of metal, * * * that are specially provided for elsewhere in the tariff schedules. *The headnote, in our opinion, also excludes identifiable parts of an article solely or chiefly used as a part of an article provided for, with its parts, in a superior heading of the tariff schedules.* * * * [Emphasis added.]

Servco, it is to be noted, involved so-called drill collars in the shape and form of pipes and tubes of steel that were imported in 30 foot lengths and were solely used with earth boring machinery to weight the drilling bit. After importation, the drill collar was processed for

[4] This headnote, which has been previously quoted, provides that part 2 of schedule 6 does not include "other articles specially provided for elsewhere in the tariff schedules, or *parts of articles.*" [Emphasis added.]

that use by welding an alloy steel "sub" to one end of the article, or by cutting threads in one end. It was then attached immediately above the drilling bit. The merchandise was classified by the government as pipes and tubes of steel under item 610.52 which, like item 609.80, the claimed provision in the present case, comes within schedule 6, part 2, subpart B of the tariff schedules. The court held that since the imported articles—though unfinished—had no other use but to be finished into drill collars, and since drill collars were used solely as parts of boring machinery, they were, by virtue of headnote 1(iv), excluded from classification as pipes and tubes of steel and properly classifiable as parts of boring machinery under item 664.05, as claimed by plaintiff.

The considerations deemed controlling in *Servco* are equally applicable here. Thus, in the present case, the rails in question had been advanced in their manufacture to such a point that after importation no further processing was required save for welding intermediate gussets to their inside to stiffen them and for occasionally trimming between a half-inch or inch of excess metal from the edge.[5] In short, in their imported condition, the involved rails were virtually ready for use only as a part of the railroad stock described in item 690.15 requiring as they did merely insubstantial further processing. Put otherwise, the imported rails had been so far processed toward their completed form as a part of a railroad car as to be dedicated to the making of that article alone. As stated in *Steinway & Sons* v. *United States*, 23 Cust. Ct. 30, 33, C.D. 1185 (1949): "Where a material has been so advanced in manufacture as to have reached a stage in which it is clearly incapable of being made into more than one article, then it shall be deemed, even though unfinished, to have been so dedicated to a single use as to fix its status as a part of that article." Hence, even though the present merchandise in its imported condition was unfinished, it still is classifiable as a part of a railroad car—a conclusion that is emphasized by general interpretative rule 10(h) which provides that "unless the context requires otherwise, a tariff description for an article covers such article * * * whether finished or not finished * * *." See e.g., *United States* v. *The Servco Company*, *supra*, 60 CCPA at 137, 477 F. 2d at footnote p. 582. See also e.g., *American Import Co.* v. *United States*, 26 CCPA 72, 74, T.D. 49612 (1938).

Added to this, plaintiff has conceded that at the time of importation and immediately prior thereto, the imported merchandise was used only for incorporation into railroad cars. Also, it is to be noted that in its imported condition, the rail in issue (as previously observed) is

[5] Not only is trimming of this kind *de minimis*, it does not affect classification of the article. See e.g., *F. W. Myers & Co., Inc.* v. *United States*, 69 Cust. Ct. 30, C.D. 4370, 345 F. Supp. 1006 (1972); *American Mannex Corp.* v. *United States*, 56 Cust. Ct. 31, 37, C.D. 2608 (1966).

identified in Amcar's schematic drawing of a hopper car as a part; that it bears a part number; and that plaintiff's witness Snyder described it as an "integral part of the car." In sum, from what has been said, the conclusion is inescapable that the imported rail is a part and not a mere material. Indeed, in the circumstances of a case such as this, in order to constitute a mere material, substantial further processing or manufacturing would be necessary after importation before the merchandise became a completed product or a completed part of a product. See e.g., *Associated Metals & Minerals Corp.* v. *United States*, 65 Cust. Ct. 586, C.D. 4143, 320 F. Supp. 997 (1970).

Plaintiff contends, however, that in *Servco*, the goods involved were recognized articles, commonly and commercially known as drill collars, whereas in the present case the articles are not commercially or commonly known by any *eo nomine* designation other than angles, shapes or sections. The difficulty with this argument is that the record in the present case shows that the imported articles are known not as angles, shapes or sections, but rather as side rails or top rails.

Also relevant is *Braun-Steeple Co.* v. *United States*, 18 CCPA 437, T.D. 44683 (1931), which involved sheets of steel 6 feet in length and 3 feet in width, in which perforations had been stamped, forming various fancy designs. After importation, the merchandise was cut to shape and form for use in radiator covers, panels in the ends of metal beds, lanterns, lighting fixtures, fire screens, etc. The court held that the importations were not mere sheets or stamped shapes under paragraph 304 of the Tariff Act of 1922—which paragraph, the court said, was "intended to provide for materials for further manufacturing processes and not for completely manufactured products." *Id.* at 440. Instead, the court held that since the involved articles had been so far processed as to be dedicated to particular uses, they were dutiable under paragraph 399 as partly-manufactured articles. Here, too, the imported merchandise had been so advanced and dedicated toward its ultimate use that it no longer consisted merely of a material for subsequent manufacturing processes but as an unfinished part of a railroad car. See e.g., *Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F. Supp. 14 (1969).

IV

This brings us to plaintiff's further argument that to hold that the imported rails are "parts of articles" would render the provision for steel angles, shapes and sections wholly or substantially nugatory. In this connection, plaintiff adds that if headnote 1(iv) were applied to the imported rails "there would be little, if any, room for the application of the tariff on angles, shapes and sections, since they are practically all dedicated as parts of particular articles." (Br. p. 20) Under

these circumstances, plaintiff asserts that "a holding that the term 'parts of articles' in the exclusionary headnote means 'products' but does not include basic materials, would resolve the possible conflict between 609.80 and the 'parts' provision." (Br. p. 19) In my view, the argument is without merit.

It may well be that most angles, shapes and sections are *ultimately* dedicated and used as parts of articles and that such *ultimate* use determines the form in which the angles, shapes and sections are made. See *United States* v. *The Singer Manufacturing Company*, 37 CCPA 104, 106, 107, C.A.D. 427 (1950). But this scarcely means that all angles, shapes and sections are parts *per se*. Thus, if in its imported condition, an angle, shape or section has been processed or advanced in manufacture *only* to a point where substantial additional processing is necessary before it can be used as a part of a given article, the import would not be classifiable as a "part," but rather would be considered a material and thus (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections. See e.g., *United States* v. *The Singer Manufacturing Company*, *supra*, 37 CCPA 104; *Associated Metals & Minerals Corp.* v. *United States*, *supra*, 65 Cust. Ct. 586.

In point on this aspect is *Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972), appeal dismissed (1973). In that case, certain imported metal stampings or blanks which were used to manufacture latch needles by numerous other steps and by the addition of a latch were held to be properly dutiable as angles, shapes and sections under item 609.88 [6] rather than as unfinished latch needles under item 670.58.[7] Particularly pertinent is the following statement by the court (69 Cust. Ct. at 53–54):

> * * * According to the Tariff Classification Study, Schedule 6, page 89, subpart B sets forth an orderly systematic arrangement which would apply to iron and steel, their alloys, and their basic shapes and forms in addition to iron and steel waste and scrap. It therefore logically follows that the provision for angles, shapes and sections includes a more advanced product than item 609.13,[8] * * * *but is still a material. Burn Strauss, Inc.* v. *United States*, 62 Cust. Ct. 664, C.D. 3845, 305 F. Supp. 14 (1969). It is to be noted that the superior heading to item 609.88 includes the language "whether or not drilled, punched, or otherwise advanced." This is a clear indication that an advancement even to the point of

[6] Item 609.88 covers cold formed angles, shapes and sections other than alloy iron or steel and weighing not over 0.29 pound per linear foot.

[7] The numerous steps required to process the imported blanks into latch needles were described in detail in *Pistorino & Company, Inc.* v. *United States*, 53 Cust. Ct. 174 at 176, C.D. 2491 (1964).

[8] Item 609.13 covers plates, sheets, and strip of iron or steel, other than alloy iron or steel, cut, pressed or stamped to nonrectangular shape and valued over 8 cents per pound.

dedication was intended to be included therein *so long as the article still remains material. Commercial Shearing & Stamping Company* v. *United States* (*Guadalupe Industrial Supply Company, Inc., Party in Interest*), 65 Cust. Ct. 91, C.D. 4060, 317 F. Supp. 750 (1970) [aff'd. 59 CCPA 203, C.A.D. 1067, 464 F. 2d 1048 (1972)]. [Emphasis added.]

We have no difficulty in finding that the imported blanks are shapes which do not conform to the specifications set forth in headnote 3, schedule 6, part 2, subpart B. We further find that said blanks are dedicated to use as latch needle blanks but are not unfinished latch needles. *The record clearly establishes that nothing is done to the blanks after stamping and before shipping.* They are accordingly unadvanced shapes. *The record and exhibit 1 establish the numerous additional steps necessary to bring the blank to the point of being a latch needle.* [Emphasis added.]

To similar effect is a Bureau of Customs letter dated July 22, 1964 (T.D. 56377(48)) which reads in part:

> Shoe sections of steel, not alloyed, unfinished, delivered from a steel mill in sections of 20 to 30 feet, in a sort of tee form with one arm of the tee extended, *which, after importation, will be cut to size, drilled, and heat treated into replacement parts for crawler type tractors*, classifiable under the provision for Angles, shapes, and sections * * * hot rolled * * *: Not drilled, not punched, and not otherwise advanced: Other than alloy * * * steel, in *item 609.80*, TSUS. [Emphasis added.]

From the foregoing, it is apparent that contrary to plaintiff's contention, headnote 1(iv) in no wise renders nugatory the provisions for angles, shapes and sections so long as the article still remains a material.[9]

Moreover, even though many angles, shapes and sections may be advanced to the point where they are dedicated to use as parts, they still would be classifiable under the provisions for angles, shapes and sections if no specific provision for the part exists. For example, in *Commercial Shearing & Stamping Company* v. *United States*, *supra*, it was held that hemispherical shapes or heads—which were chiefly used as end closures on pressure containers designed and used for the transport and storage of compressed gases—were properly classified by the government as angles, shapes and sections under item 609.80—the same item that is involved here—rather than as articles of iron or

---

[9] Another Bureau of Customs letter dated June 29, 1964 (T.D. 56237 (145)) reads: Automobile tire rim bases made of hot rolled steel are classifiable under the provision for Sections * * * of iron or steel, hot rolled * * * not drilled, punched, or otherwise advanced * * *: * * * Other than alloy iron or steel, in item 609.80, TSUS.
It is not possible to ascertain from this Bureau letter whether the article in question in its imported condition did or did not require substantial further processing. Hence, since the facts set forth in the letter are insufficient to determine whether the article is a part or material, the letter sheds no light on the problem before us here.

steel, not specially provided for, under item 657.20, as claimed by plaintiff. While the record showed that the imported merchandise was a part of a metal pressure container designed and used for the transport and storage of compressed gases, item 640.10, which covers such containers, does not provide for parts.[10] For that reason, classification of the imported shapes as a part under item 640.10 was precluded and the articles were held properly classified as angles, shapes and sections under item 609.80—which item, the court held, was relatively more specific for the hemispherical shapes, in the condition imported, than item 657.20, the general provision for articles of iron or steel, not specially provided for.

V

Finally, plaintiff contends that it is clear from the legislative history that the Tariff Commission understood that angles, shapes and sections, as well as structural steel shapes are always parts of something, and that therefore the provisions for angles, shapes and sections and structural steel shapes would be rendered nugatory if they were to be classified as "parts." However, when, as here, the language of a statute, i.e., headnote 1(iv), is clear and unambiguous, resort may not be had to legislative history. See e.g., *George B. Zaloom* v. *United States*, 21 CCPA 518, 521–2, T.D. 46972 (1934); *F. Mastronardi, Inc.* v. *United States*, 27 CCPA 350, 353, C.A.D. 110 (1940); *Marcel Schurman* v. *United States*, 38 Cust. Ct. 56, 58, C.D. 1843 (1957).

In any event, examination of the legislative history fails to support plaintiff's argument. As originally proposed by the Tariff Commission, schedule 6, part 2, headnote 1, provided that

> * * * This part does not include—
>
> * * * * * * *
>
> (iv) other articles provided for elsewhere in the tariff schedules, or parts of articles.

See Tariff Classification Study, Explanatory and Background Materials, Schedule 6 (Nov. 15, 1960) p. 343 (hereafter referred to as the "Tariff Classification Study").

Also, in its original form, items 609.80 and 609.92 of schedule 6, part 2, subpart B, read in part as follows: (*Id.*, p. 371):

> Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, drawn, cold formed or cold finished, whether or not drilled, punched, or otherwise advanced, *or made by the as-*

[10] Item 640.10 covers "Metal pressure containers designed and used for the transport and storage of compressed gases: * * * Other."

sembly of components; sheet piling of iron or steel: [Emphasis added.]
Angles, shapes, and sections:
Not drilled, not punched, not otherwise advanced, *and not made by the assembly of components:* [Emphasis added.]
Hot rolled:
609.80 Other than alloy iron or steel ---------- * * *
* * * * * * *
Drilled, punched, otherwise advanced, *or made by the assembly of components:* [Emphasis added.]
609.92 Other than alloy iron or steel ---------- * * *

In addition, as originally proposed, item 652.98 of schedule 6, part 3, subpart F read as follows (Tariff Classification Study, p. 437):

Hangers and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, pillars and columns, and other structures and parts of structures, all the foregoing of base metal:
Of iron or steel:
* * * * * * *
652.98 Other ---------- * * *

In the course of hearings before the Tariff Commission with respect to these proposed provisions, Peter N. Schiller, representing the American Institute for Imported Steel, Inc., testified as follows (Tariff Classification Study, p. 584):

> Finally, the attention of the institute was called by a number of persons to what they thought might be a possible conflict between item 652.98 * * * and the provisions of part 2, particularly those dealing with angles, shapes, and sections, items 609.80 et seq. * * *. The main caption above item 652.98 * * * deals with complete steel structures and parts thereof, such as hangars, bridges, towers, and the like. After enumerating "hangars and other buildings, bridges, bridge sections, block-gates," etc., the caption says: "and other structures and parts of structures." It has been suggested that the inclusion of the phrase "parts of structures" in this provision might conflict with or overlap the clear provisions for steel shapes in part 2 * * * items 609.80 et seq. That it is not intended that there be any overlapping seems to us quite clear. If, for example, punched angles or other shapes were to be classified as "parts of structures" under item 652.98 in part

3, instead of under item 609.92 in part 2, then all angles, shapes, and sections might equally well be so treated since all angles, shapes, and sections are pieces of structural steel used to make structures. Such an interpretation, which would eliminate almost any application of items 609.80 to 609.98 would be, of course, absurd. Nevertheless, to avoid any possible confusion, we have suggested that there be added at the end of the caption preceding item 652.98, after the phrase "parts of structures," the words "not provided for in part 2B of this schedule."

Also, in connection with these proposed provisions, Malcolm S. Langford, representing a foreign manufacturer and exporter of fabricated structural steel shapes, testified in part as follows (*Id.*, p. 608):

> I fully agree with Mr. Schiller that every fabricated structural steel shape is for use in some kind of structure and that, accordingly, if such shapes should be considered "parts of structures" under item 652.98, there would be no reason to include item 609.92 in the schedule at all.
>
> It seems reasonably clear that the intention of the drafters of the proposed revised tariff schedules was to cover all fabricated structural steel shapes in item 609.92 and not by the general words "parts of structures" in the caption preceding item 652.98.
>
> Paragraph 9 of the general headnotes and rules of interpretation of the proposed schedules says, in subparagraph (c), that an article described in more than one provision of the schedules is to be classified in the provision which most specifically describes it—in this case, item 609.92.
>
> Secondly, subparagraph (g) of paragraph 9 says that a provision for "parts" of an article covers a "product" solely or chiefly used as a part of such article, though it does not prevail over a specific provision for such a part. Thus, "parts of structures" must mean "metal products," which is the subject of part 3 of schedule 6. Since angles, shapes, and sections are not "products," but basic shapes and forms under part 2 of schedule 6, fabricated structural steel shapes are by definition excluded from item 652.98.
>
> Furthermore, the caption preceding item 652.98 enumerates such articles as door and window frames, shutters, balustrades, pillars, and columns which are themselves, plainly, distinct products even though intended for use as parts of structures.
>
> This is consistent with the common practice of speaking of automobile parts as covering, for example, carburetors, axles, and brake drums, but not pieces of metal or other materials which go into such parts.
>
> Finally, it seems doubtful that the drafters of schedule 6 intended in this way to effect a tariff increase from 7½ to 19 percent ad valorem, or even that it lies within the authority granted by section 101 (d) of the Customs Simplification Act to do so.
>
> * * * * * * *
>
> Notwithstanding the fact that fabricated structural steel shapes would probably be found to come under item 609.92 rather than

item 652.98, if the issue were litigated, and notwithstanding the evidence that item 609. 92 was intended to cover such shapes, we join in the suggestion that any possible doubt be removed by appropriate amendment. Clarification could be accomplished in any one of several ways, including the amendment suggested in Mr. Schiller's statement. As a possible alternative, we suggest that the words "other structures and parts of structures" in item 652.98 be changed to read "other structures and products (but not basic shapes and forms) used as parts of structures."

Thereafter, the following colloquy took place between Russell N. Shewmaker, Assistant General Counsel of the Tariff Commission, and the witness Langford (*Id.*, p. 608):

MR. SHEWMAKER. I believe your point is well taken and some clarification is in order and we will give further attention to that.

I would like to ask you a question, though, about the nature of your imports. Are your imports invariably the individual pieces or do you have any sub-assemblies which, as imported, are in assembled condition?

MR. LANGFORD. * * * They are always individual pieces, Mr. Shewmaker.

MR. SHEWMAKER. Would there ever be any instance where the complete structure would be imported in knocked-down condition?

MR. LANGFORD. The answer would be "No, there would never be a complete structure in one shipment; they would always be knocked down," and, for example, if there were a powerline being built by somebody like the New York State Power Authority, which is a customer of SAE, the shipments would necessarily be all of the pieces of steel which go into the footings and the legs first for all of the towers in the line and then you would start to get pieces which go higher up on the line of towers.

MR. SHEWMAKER. So you have no assemblies of pieces and no complete towers in a single shipment?

MR. LANGFORD. That is right.

In the final draft, the language preceding items 609.80 and 609.92 was changed (1) by deleting the phrase (which has previously been quoted in italics) "or made by the assembly of components," and (2) by deleting from the language immediately preceding item 609.80 the phrase (which also has previously been quoted in italics) "and not made by the assembly of components." Further, the format of items 609.80 through 609.98 was revised. As the Tariff Commission explained (Tariff Classification Study, pp. 94–95):

Items 609.80 through 609.98 cover angles, shapes and sections, and sheet piling, of iron or steel. The proposed provisions are derived from paragraphs 304, 305, and principally 312. The provisions of these items have been modified substantially since the public hearing to take care of valid objections which were raised

> in connection with the hearing. The published provisions were unclear in certain respects and also would have increased the rates of duty on significant items of trade. The objections raised by importers on these points have been taken care of in the final proposals. In these items and also in related provisions of part 3F of this schedule (items 652.90 through 652.98) existing customs practices are reflected without significant rate change. * * *

Plaintiff insists that "[f]rom the above, it is clear that the Tariff Commission understood that structural steel shapes as well as angles, shapes and sections are always parts of something, and there would be no room for the operation of the provisions for structural steel shapes and angles, shapes and sections if they were to be classified as 'parts.'" (Br. p. 19) On the contrary, as the witness Schiller testified, it would be "absurd" to interpret the phrase "parts of structures" in item 652.98 as covering all angles, shapes and sections. Tariff Classification Study, p. 584. Nevertheless, to avoid any possible confusion, he suggested that there be added at the end of the caption preceding item 652.98, after the phrase "parts of structures" the words "not provided for in part 2B of this schedule." *Ibid.* The testimony of the witness Langford (as noted previously) was to similar effect, except that he suggested as a possible alternative that the words "other structures and parts of structures" in item 652.98 be changed to read "other structures and products (but not basic shapes and forms) used as parts of structures." Id., p. 608.

In this setting, it is to be observed (as pointed out before) that the Tariff Commission did not adopt the proposed changes in language recommended by the above witnesses but instead deleted from the language preceding items 609.80 and 609.92 the phrase "or made by the assembly of components" and also deleted from the language immediately preceding item 609.80 the phrase "and not made by the assembly of components."

In this connection, without deciding the question, it would appear that an angle, shape and section which is made by the assembly of components is ordinarily so far advanced in manufacture as to constitute a part rather than a material. In this circumstance, it would seem that the reason the Tariff Commission deleted such angles, shapes and sections from the provisions of items 609.80 et seq. was to avoid possible conflict between these provisions and the provision in item 652.98 covering "parts of structures." Be that as it may, what is even more significant in all this is that the Tariff Commission and Congress did not exclude item 609.80 *in any way* from the operative effects of headnote 1(iv). In fact, the only change made in that headnote, as originally proposed, was to add the word "specially" after the word "articles."

VI

In summary, the court holds that the imported rails are "parts" of railroad cars of the kind described in item 690.15 and were, therefore, by virtue of headnote 1(iv), properly classified by the government under item 690.35. Plaintiff's claim for classification under item 609.80 is therefore overruled.

Judgment will be entered accordingly.

(C.D. 4501)

MITSUBISHI INTERNATIONAL CORP. *v.* UNITED STATES

Plywood

EXPORT VALUE—SALES AT MANUFACTURER'S LEVEL—EVIDENCE

The plaintiff contended in its complaint that the proper export value of the merchandise is $115, United States dollars, per thousand square feet, f.o.b. Japanese port, but an accurate conversion of the Japanese yen contract price shows the claimed figure to be $119.35. There was conflicting evidence as to actual yen price; evidence of price bargaining and sales negotation; and evidence that the merchandise was not freely sold or offered for sale at wholesale at the level of manufacture to all purchasers at the price paid by the Japanese buyer in this case.

HELD, the evidence adduced does not comport with the statutory requirements for an export value basis as defined in 19 U.S.C.A. § 1401a(b) at the price at which the merchandise was initially sold by the manufacturer.

Court No. 71-12-02054

Port of New Orleans

[Judgment for defendant.]

(Decided March 5, 1974)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Patrick D. Gill* and *David A. Ast*, trial attorneys), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of plywood which was exported from Japan and appraised upon entry at the port of New Orleans, La. under the export value basis of appraisement as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) at either $142.50, $155.00, or $165.83, United States dollars, per

thousand square feet. Plaintiff-importer alleges in its complaint that the proper export value of the merchandise is $115.00, United States dollars, per thousand square feet, f.o.b. Japanese port.

The record in the case consists of the testimony of Kenji Matsuo, manager of the general merchandise B section of the Los Angeles office of the plaintiff corporation, called as a witness on plaintiff's behalf; an affidavit of Hideaki Mori, chief of the domestic sales section for fancy plywood of Eidai Co., Ltd., of Osaka, Japan, dated April 19, 1973, and received in evidence as plaintiff's exhibit 1; a report of Jerry L. Kane, Customs Representative, dated January 17, 1973, received in evidence as defendant's exhibit A; and the official entry papers.

In its brief plaintiff modifies its claim, and now contends that the proper export value of the subject merchandise is $119.35 per thousand square feet, f.o.b. Japanese port, based upon the initial sales price of the manufacturer Eidai Mokuzai Kogyo, K.K. of ¥42,697 per thousand square feet, f.o.b. Kobe. The defendant does not question this contract price, and concedes that it converts to $119.35. (Defendant's brief, p. 21.) However, defendant did point out that Hideaki Mori stated in both of his affidavits that the price was stable at approximately ¥46,700 which converts to $130.54, according to defendant. Since plaintiff's claim is confined to the existence of export value at the mill or manufacturer's level, only certain portions of the record in the case are pertinent to this inquiry.

Kenji Matsuo testified on direct examination that for some 18 years prior to his employment by plaintiff, including the relevant period between 1969 and 1970, he was a staff member of Mitsubishi Corporation in Tokyo, Japan, working in the lumber department which handled all kinds of wood and construction materials where he was involved with the exportation of plywood. He stated that his activities then consisted mainly in selling wood products to the United States; that when Mitsubishi Tokyo received orders from plaintiff for rustic plywood he placed the orders with one of two mills, namely, the Eidai mill or the Asahi mill, for the account of Mitsubishi Tokyo; that he was familiar with the prices that Eidai was charging for its rustic, standard grade, wide-grooved walnut plywood; and that such price was $115.00 (R. 16).

On cross-examination Matsuo identified the manufacturer of merchandise described on the invoice in entry 108000 and on invoice 36–113(C) of entry 117483 as Eidai Mokuzai Kogyo, K.K. He testified that during the 1969 and 1970 period Mitsubishi Tokyo was selling all over the world, that he was involved with sales of this merchandise to countries outside of the United States, and that sales of fancy plywood to the United States from Japan accounted for approximately

33 percent of Japan's export sales, because, as far as fancy plywood was concerned, Europe was one of Japan's biggest markets.

Invoices in all of the entry papers in the case disclose that the merchandise in issue was manufactured by Eidai Mokuzai Kogyo, K.K.

Hideaki Mori was first interviewed by Customs Representative Kane on January 8, 1973, and the substance of that interview, reduced to affidavit form, is identified as exhibit C in the Kane report (defendant's exhibit A). Mori subsequently executed another affidavit dated April 19, 1973, which is in evidence as plaintiff's exhibit 1. In the Kane interview, Mori's attention was directed to the shipments involved herein which were identified as rustic grade, standard quality, unfinished, American black walnut, ¼″ x 4′ x 8′, mismatched, V-grooved, color-toned, black putty filled plywood according to E. L. Bruce Co. specifications of Eidai manufacture. Mori was then questioned as follows:

> Q. 2: Was this merchandise sold or offered only to Mitsubishi Shoji?
>
> A. 2: No, this merchandise was offered to all Japanese exporters at the same terms but Mitsubisubishi [sic] was the only one who purchased it during the time in question.
>
> Q. 3: Did your firm actually make the sale to Mitsubishi or was the sale to someone else through Mitsubishi? Please document the prices and names of customers.
>
> A. 3: As I mentioned before, Mitsubishi was the only buyer at that time. We don't have the records available for such an old sale but the price was stable at approximately ¥46,700.0 per thousand square feet at FOB Kobe terms.
>
> Q. 4: Did your firm offer to sell this merchandise directly for export to the United States or to a reseller in Japan? Document your answer.
>
> A. 4: We offered to sell this merchandise at the same prices to exporters in Japan. If an American firm has offices here, they could have purchased it. We don't deal with firms that don't have offices here because of the problems with international credit. We cannot document offers since they were made over the telephone but our regular customers for this merchandise are Nichimen and Nissho-Iwai in addition to Mitsubishi.
>
> Q. 5: Describe the manner and relationship of the transactions between your firm and Mitsubishi.
>
> A. 5: There is no special relationship between us. Mitsubishi just calls and requests a price quotation and delivery date for a certain quantity of plywood and we respond with a price. If it is agreeable with their side, they issue a purchase order a week later and we start production. When the merchandise is ready, they tell us how to mark it and we put it on board ship and finally recieve [sic] payment.
>
> Q. 6: Did you sell the merchandise directly to Mitsubishi Shoji and not for export to the United States?

A. 6: No, we know that this merchandise was to be exported for several reasons. First the terms specified FOB Kobe port and we knew that it was bound for an American firm who would finish it. Walnut plywoods are not popular in Japan and all of our domestic plywood is finished.

In his later affidavit Mori, addressing himself to the same subjects on which he was earlier interviewed by Customs Representative Kane, averred:

> That during this period [July, 1969, through February, 1970] our firm offered this merchandise to all Japanese exporters *or to American firms with offices in Japan* at the same terms as this merchandise was sold to Mitsubishi Shoji. We do not deal with firms that do not have offices in Japan because of the problems with international credit. However, during this period Mitsubishi Shoji was the only one to purchase this merchandise. We do not have the records available for such old *sales* but the price was stable at approximately ¥46,700 *or $115.00* per thousand square feet at FOB Kobe terms.
>
> That there is no special relationship between Mitsubishi Shoji and ourselves. Mitsubishi Shoji just calls and requests a price quotation and delivery date for a certain quantity of plywood and we respond with a price. If it is agreeable with their side, they issue a purchase order a week later and we start production. When the merchandise is ready, they tell us how to mark it and we put it on board ship and finally receive payment. [Emphasis added.]

Yoshihiro Tokuda, employed in the South Sea lumber section C of the Mitsubishi Corporation in Tokyo, was also interviewed by Customs Representative Kane on December 29, 1972 (defendant's exhibit A, exhibit B attached thereto). He stated that he actually participated in the "sales negotiations" between Eidai and Mitsubishi Shoji. Also, Sadao Kurosawa, managing director of the Japan Plywood Exporters' Association of Tokyo (of which Mitsubishi Shoji was a member and its representative was a director), in answer to the 26th question on his affidavit in exhibit A stated ". . . prices were subject to bargaining but I cannot say by how much nor how often they varied because I did not have access to price information." Tokuda further stated:

> Q. 2: Was your firm a reseller for export of the merchandise purchased from Eidai Mokuzai K.K. during this period? If so, document the dates of purchase and the prices.
>
> A. 2: Yes, we were a reseller but we purchased the plywood in question from Eidai Sangyo. Eidai Mokuzai was the actual manufacturer but we purchased from Eidai Sangyo, the sales division of the parent corporation. All of the merchandise in the shipments in question was purchased on one contract. I have attached

a copy of this contract as Exhibit A to this affidavit and that contract shows that a total of 960,000 square feet were purchased on March 29, 1969 for 42,697.0 yen per thousand square feet. This price was for F.O.B. Kobe or Osaka port, COD terms.

* * * * * * *

Q. 6: Was your firm instrumental in having Eidai produce the walnut plywood to E. L. Bruce specifications?

A. 6: I don't think so. This particular plywood was very popular at that time so Eidai was probably already manufacturing it. It [sic] not, the written specifications would be sufficient for a factory to set up for this particular pattern as not much preparation is required by a factory which is already manufacturing rustic grade fancy walnut plywoods.

Examination of the Eidai-Mitsubishi Shoji contract referred to in the Tokuda interview discloses no reference or notation as to the destination of the 960,000 square feet of plywood involved.

Takeshi Kinugasa, chief of the export department of Asahi Fancy Plywood Co., Ltd., of Osaka, Japan, was interviewed by Customs Representative Kane on January 8, 1973 (exhibit D of defendant's exhibit A). Kinugasa responded in part:

Q. 1: Mr. Kinugasa, according to our Customs records, your firm sold rustic grade, standard quality, unfinished, American Black Walnut 1/4"x4'x8', mismatched, V-grooved, color-toned, black putty filled plywood which was manufactured according to E. L. Bruce Co. specifications during the period corresponding to shipments made from July, 1969 through February, 1970. Were you associated with these shipments? If so, please describe how as well as your duties with Asahi.

A. 1: Yes, as Chief of the Export Section, I was responsible for negotiating prices for this merchandise, arranging delivery details and maintaining liaison with the buyer. I have acted in this position for the past six years.

* * * * * * *

Q. 5: Would the price of this merchandise change if there was a change in the specifications regarding color-toning or black putty filling?

A. 5: In order to be considered rustic, this plywood must meet those standards. A change in color isn't a significant factor in pricing. *The statement about E. L. Bruce specifications only reflects a less popular pattern of spacing the grooves on standard merchandise.* [Emphasis added.]

Plaintiff argues that the evidence of record supports the conclusion that the subject merchandise was the subject of a sale for exportation to the United States at the mill level which complies with all of the requirements of the statutory export value formula, in this case, sec-

tion 1401a(b). As to the imported merchandise, plaintiff says in its brief:

> As there was a freely sold price of such merchandise at the mill level, said price, being stable during the period in question, must be used for determining export value as defined in Section 402(b). This price is ¥42,697 or $119.35 per thousand square feet, F.O.B. Japanese port.

With respect to merchandise other than the imported merchandise, plaintiff argues:

> . . . that Eidai offered this merchandise on the same terms as offered to Mitsubishi to any others who were in a position to buy; and that during the period in question the price was stable. . . .

Defendant argues that the evidence does not support the conclusion that the imported merchandise was sold by Eidai to Mitsubishi Shoji for exportation to the United States, that the contract price underlying the mill's price to Mitsubishi Shoji was below the mill's offering price, was not shown to be for the usual wholesale quantity, or the price at the time of exportation of the imported merchandise, and represented a price which was arrived at by bargaining or negotiation.

The applicable statutes read as follows:

[Section 1401a(b)]

> For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

[Section 1401a(f)(4)(A)]

> (f) For the purposes of this section—
>
> * * * * * * *
>
> (4) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which export value . . . can be satisfactorily determined:
>
> (A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise undergoing appraisement.

The Court is of the opinion that on the basis of the evidence of record plaintiff has failed to establish an export value for the involved

merchandise based upon Eidai's price to Mitsubishi Shoji, i.e. ¥42,697. Although the evidence shows that the imported merchandise was initially sold at this price, that price does not qualify in this case as a basis for establishing statutory export value even if we assume that the transaction was a sale for exportation to the United States. It is not contended in this case by plaintiff that Mitsubishi Shoji was a "selected purchaser". Consequently, export value may not be predicated alone upon the basis of the price paid for the imported merchandise. *Agricolas de Mexico, S. de R.L. de C.V.* v. *United States*, 66 Cust. Ct. 612, 618, A.R.D. 285 (1971) In this case there must be evidence that the claimed price was the price at which this merchandise was freely offered to all purchasers at wholesale during the period in question, i.e., July, 1969, through February, 1970, for exportation to the United States. *United States* v. *Thomas P. Gonzalez Corp.*, 66 Cust. Ct. 597, 603, A.R.D. 283 (1971).

In the *Gonzalez* case the merchandise was garlic powder produced in Mexico by Cia. Agricola de Ensenada, S.A. whose entire output was purchased for exportation to the United States by the importer Thomas P. Gonzalez Corp. at a price of $3.12 Mexican currency per Kilo, f.o.b. Ensenada. The court found this sales price to be a freely sold price within the meaning of statutory export value, based upon free offers at that price for exportation to the United States. To the same effect is the holding of the court in *United States* v. *Getz Bros. & Co. et al.*, 55 CCPA 11, C.A.D. 927 (1967), involving plywood doorskins manufactured by some 25 Japanese mills. On this point our appeals court, in affirming the lower court, called attention in the *Getz Bros.* case to the opinion of the trial court where, in assessing the evidence of record, the trial court stated:

> It appears to the court that the facts in the present cases [sic] are stronger in support of finding that the sales by the manufacturing mills provide the proper basis for determining export value than are the facts in the previously decided cases. In the present case, certain facts are established by a heavy preponderance of evidence. In the affidavits offered in evidence by the plaintiffs, all of which are substantially the same, it definitely appears that all the manufacturing establishments from which purchases were made in the appealed cases herein offered their merchandise for sale to all purchasers who desired to buy for export to the United States and not merely to the so-called trading houses.

In the instant case there is no persuasive evidence that Eidai offered the plywood in issue to all purchasers at wholesale in Japan for exportation to the United States. The initial Mori affidavit (affidavit C of defendant's exhibit A) averred that Eidai offered the merchandise to Japanese exporters, the chief customers being, in addition to Mitsu-

bishi Shoji, Nichimen and Nissho-Iwai—asserting only that *if* an American firm had an office in Japan, it *could have* purchased the merchandise.

Bearing in mind the facts, as developed in the record, that the E.L. Bruce Co. specifications were not an indication of destination of plywood but rather a pattern of design on plywood, and that only 33 percent of this fancy plywood was exported to the United States, the initial Mori affidavit does not establish that the offering mentioned therein was for exportation to the United States.

Of course, the second Mori affidavit does undertake to supply this deficiency in proof in the averment:

> That during this period our firm offered this merchandise to all Japanese exporters or to American firms with offices in Japan at the same terms as this merchandise was sold to Mitsubishi Shoji....

But nowhere under point III of its brief, plaintiff's exhibit 1 notwithstanding, does plaintiff contend that the evidence establishes that at the times in question the subject merchandise was freely offered for sale by Eidai in Japan to all purchasers at wholesale for exportation to the United States. At most, plaintiff, under point III of its brief asserts "that Eidai offered such merchandise during the period in question at the same terms as sold to Mitsubishi, Tokyo, to *others*...." (Emphasis added.)

Thus, it appears that plaintiff is aware that the belated statement of Hideaki Mori noted above contained in plaintiff's exhibit 1 [wherein he undertakes to modify his earlier statement contained in affidavit C of defendant's exhibit A] does not contain the necessary proof required by the statute to establish export value. And neither does the court attach credence to this statement in exhibit 1 in view of the fact that exhibit 1 does not aver that there were in fact any American firms with offices in Tokyo at the time or undertake to identify any such firms—thereby removing the *speculation* on this point created by the first Mori affidavit.

Plaintiff has not established that there was a freely sold or offered price to all purchasers for export to the United States. Therefore, on the record in this case, the court finds as facts:

1. That the merchandise in this action consists of A.B. Walnut MM-VG rustic standard grade wide-grooved walnut plywood manufactured in Japan by Eidai Mokuzai Kogyo, K.K. and exported from Japan between July, 1969, and February, 1970.

2. That said merchandise was appraised upon entry at the port of New Orleans, La. on the basis of export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by

the Customs Simplification Act of 1956) at either $142.50, $155.00, or $165.83 per thousand square feet.

3. That there is no evidence in the record that establishes that at the time of exportation of said merchandise there was such merchandise freely sold, or, in the absence of sales, offered for sale in the principal markets of Japan by the manufacturer or its representatives to all purchasers at wholesale for exportation to the United States.

Upon these facts the court finds as matters of law:

1. That export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) is the proper basis for determination of the value of the merchandise herein.

2. That plaintiff has not established an export value different from that returned in the appraisement of said merchandise.

3. That the appraised values of said merchandise remain in full force and effect by reason of plaintiff's failure to overcome the presumption of correctness attaching to the appraisement.

Judgment will be entered herein accordingly.

(C.D. 4502)

DITBRO PEARL CO., INC. *v.* UNITED STATES

Ladies' belts (chain)

Court No. 71-5-00113

Port of New York

[Motion for rehearing denied.]

(Dated March 11, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel); *Rode & Qualey* (*John S. Rode* of counsel) associate counsel; for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

LANDIS, Judge: In its contested motion for rehearing of *Ditbro* Pearl Co., Inc. 1. United States, 72 Cust. Ct. 1, C.D. 4497 (1974), plaintiff asks the court to reconsider plaintiff's claim that abstracted Bureau decisions of general interest affecting classification, including one which classified ladies' chain belts as chain or chains under TSUS item 652.38, constituted a finding of an established practice requiring notice of change under section 315(d), Tariff Act of 1930, as amended, 19 U.S.C., section 1315(d).

Replying to plaintiff's contention on rehearing that the abstracted Bureau decision T.D. 68-77(3), 2 Customs Bulletin 157 (one of

twenty-one Bureau decisions abstracted under T.D. 68–77, most of which dealt with classification matters) is *ipso facto* a finding by the Bureau of a uniform and established practice under section 315(d), it is again pertinent to note as stated in the previous opinion herein (C.D. 4497) that "plaintiff cites no case and I find none which sustains the general proposition that the mere publication of a Bureau abstracted decision on the classification of merchandise establishes a uniform practice for classifying the merchandise and requires a subsequent notice under section 315(d) if the practice is to change." Plaintiff's contention, without any legal authority to support it, is clearly untenable.

I would also observe that the court knows nothing whatever of the manner or extent to which the Bureau might consider itself bound by an abstracted Bureau decision;[1] knows none of the facts underlying the abstracted Bureau decision (T.D. 68–77(3)) classifying "Aluminum ladies belts, consisting of 36 inch lengths of aluminum chain with a small brass hook attached to one of each length" as chain or chains and, accordingly, cannot know nor is there any proof that the imported ladies' gold colored chain belts are the same as the aluminum ladies' belts covered by the abstracted Bureau ruling. Cf. *United States* v. *Edward I. Petow & Son, etc.*, 34 CCPA 55, C.A.D. 343 (1946); *United States* v. *Electrolux Corporation*, 46 CCPA 143, 150, C.A.D. 718 (1959) (dissenting opinion); *Koeller-Struss Co.* v. *United States*, 12 Ct. Cust. Appls. 189, 191, T.D. 40170 (1924); *B. A. McKenzie & Co., Inc.* v. *United States*, 39 Cust. Ct. 52, 55, 56, C.D. 1903 (1957); *Air Clearance Ass'n, Inc.* v. *United States*, 37 Cust. Ct. 138, 143, C.D. 1813 (1956); *Detroit & Canada Tunnel Corp.* v. *United States*, 10 Cust. Ct. 32, 36, C.D. 717 (1943).

The motion for rehearing is denied.

(C.D. 4503)

AVINS INDUSTRIAL PRODUCTS CO. *v.* UNITED STATES

Metal products—Wire

Stainless steel wire, type 302, in varying lengths from 12″ to 26.5″, not over 0.703″ in maximum cross-sectional dimension, held properly assessed with duty under item 609.45, Tariff Schedules of the United States, as round wire of alloy iron or steel, plus additional duty on the chromium content in excess of 0.2 per centum

[1] See, T.D. 66–125, 101 Treas. Dec. 363 (1966), quoted by plaintiff in support of this motion, but discussed in a context quite different from the actual context of what is quoted.

under item 607.01, rather than under item 685.25, as unfinished parts of antennas for automobile radio receivers.

PARTS, UNFINISHED—SCHEDULE 6, PART 2

Unfinished parts of an article are classifiable as parts under the Tariff Schedules of the United States, unless the context requires otherwise. General Interpretative Rule 10(h).

Merchandise which has progressed to the point of being an unfinished part is precluded from classification under schedule 6, part 2, by virtue of headnote 1(iv), where it is elsewhere provided for as a part, unless the context requires otherwise.

PARTS, UNFINISHED—MATERIAL

A thing may be classified as an unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit only for use as that article and is incapable of being made into more than one article or class of articles.

WIRE—PARTS, UNFINISHED—CONSTRUCTION—CONGRESSIONAL INTENT

Congress intended merchandise encompassed within the definition of wire in headnote 3(i), schedule 6, part 2B, to be classed as wire and not as an unfinished part or article, whether or not it is cut to length and is in certain dimensions making it particularly adaptable for a certain use.

Merchandise falling within the definition of wire is not a part, finished or unfinished, within the intent of Congress and is not precluded from classification under item 609.45 by virtue of headnote 1(iv), schedule 6, part 2.

Court No. 72-3-00709

Port of New York

[Judgment for defendant.]

(Decided March 12, 1974)

Donohue and Shaw (*Charles P. Deem* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

RAO, Judge: The merchandise in this case consists of stainless steel wire, type 302, imported in varying lengths from 12″ to 26.5″, not over 0.703″ in maximum cross-sectional dimension. It was assessed with duty under item 609.45, Tariff Schedules of the United States, at 10.5 per centum ad valorem, as round wire of alloy iron or steel, plus 0.9 cents per pound on the chromium content in excess of 0.2 per centum under item 607.01. It is claimed that the merchandise constitutes parts of antennas for automobile radio receivers and is properly dutiable under item 685.25 at 7 per centum ad valorem.

The pertinent provisions of the tariff schedules are as follows:

General Headnotes and Rules of Interpretation

* * * * * * *

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, * * * whether finished or not finished.

Schedule 6, part 2 headnotes:

1. This part covers precious metals and base metals * * *, their alloys, and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. * * * This part does not include—

* * * * * * *

(iv) Other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

* * * * * * *

Subpart B.—Iron or Steel

Subpart B headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, * * *.

* * * * * * *

3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

* * * * * * *

(i) Wire: A finished, drawn, nontubular product, of any cross-sectional configuration, in coils or cut to length, and not over 0.703 inch in maximum cross-sectional dimension. The term also includes a product of solid rectangular cross section, in coils or cut to length, with a cold-rolled finish, and not over 0.25 inch thick and not over 0.50 inch wide.

* * * * * * *

4. Additional duties: Iron or steel products which contain, by weight, one or more of the following elements in the

	quantity, by weight, respectively indicated:	
	over 0.2 percent of chromium, * * *	
	* * * * * * *	
	are subject to additional cumulative duties as provided for in items 607.01 * * *, but these duties apply only with respect to products covered by provisions which make specific reference to this headnote in the "Rates of Duty" columns.	
	* * * * * * *	
	Iron or steel products containing any of the following metals in the quantity respectively specified (see headnote 4 of this subpart):	
607.01	Containing over 0.2 percent by weight of chromium----------	Additional duty of 0.9¢ per lb. on chromium content in excess of 0.2%
	* * * * * * *	
	Wire of iron or steel:	
	* * * * * * *	
	Round wire:	
	* * * * * * *	
609.45	Alloy iron or steel----------	10.5% ad val. +additional duties (see headnote 4)
	Schedule 6, part 5:	
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; * * * and parts thereof:	
	* * * * * * *	
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:	
	* * * * * * *	
	Other:	
	* * * * * * *	
685.25	Other----------	7% ad val.

This case has been submitted on a sample of the merchandise and the following agreed statement of facts:

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the plaintiff and the Acting Assistant Attorney General for the United States:

1. That the plaintiff, Avins Industrial Products Co., has for several years been importing merchandise of the type which is the subject of this case.

2. That attached hereto and marked as Exhibit 1 is a representative sample of the merchandise which is the subject of this case.

3. That the instant merchandise was imported in varying lengths from approximately 12″ to 26.5″, including 12.5″, 18″, 18.813″, 18.75″, 20.25″, 24″, 24.25″, and 26.25″, pursuant to the specifications of the ultimate consumers, viz, the purchasers from the importer, who have assigned part numbers, as shown on the commercial invoices, to the various imported articles.

4. That the importations are describable as finished, drawn, nontubular products of Type 302 stainless steel not over 0.703″ in maximum cross-sectional dimension, which have been cut to the lengths shown in paragraph 3.

5. That Type 302 stainless steel products, including wire, are those which conform by metallurgical analysis to industry specifications established by the American Iron and Steel Institute.

6. That Type 302 stainless steel wire of varying length and diameter was used in the United States, at or immediately prior to importation of the instant merchandise, in a variety of applications that required one or more of the physical and mechanical properties of Type 302, viz, corrosion resistance, electrical conductivity, thermal conductivity, tensile strength, resistance to bending, ability to polish efficiently, and pleasing appearance.

7. That some such uses were as follows: radio antenna sections, cross-wire welded grids for refrigeration trays and shelves, woven wire belts for conveyors, cooking skewers, screens and strainers for a variety of chemical processing applications.

8. That the imported merchandise was imported in the specific lengths and diameters required by the customers of the plaintiff with the diameter and length tolerances shown on the commercial invoices.

9. That the imported merchandise underwent, in order to improve its capability to telescope freely in its intended use, a straightening process after drawing, to a close tolerance, which is not always required of Type 302 stainless steel wire which is to be used in all of the aforesaid applications. Antenna sections normally require such a straightening process.

10. That in none of the known uses of Type 302 stainless steel wire other than as antenna sections was the wire of the identical diameter or identical length as the imported articles.

11. That the plaintiff resold the merchandise to its customers, six in number, whose businesses were the manufacturing of radio antennas generally for use on automobiles.

12. That the imported merchandise was used by these customers for manufacture into said antennas.

13. That the merchandise as used by these customers was generally subjected to an operation whereby one end of the wire was chamfered. After this operation, the chamfered end or either end if no chamfer is made, was press fitted into a small metal ball and the other end inserted into the base of an antenna or other section of a telescoping type antenna (for a telescoping antenna a small leaf spring was attached to the wire so as to maintain tension and electrical contact between sections of the antenna).

14. That the imported merchandise in their condition as imported were actually used only as described herein for the manufacture of antennas, and were essential to the proper functioning thereof; since as imported the merchandise had not been physically deformed by having been bent, stamped, pressed, or otherwise committed to shape, it would have been possible, by the modification of the material requirements and type and extent of fabrication inhering in other uses of Type 302 stainless steel wire, to make use in some of those applications of wire of the same diameter and lengths as the imported articles.

15. That "wire", which is a finished, drawn, non-tubular product, not over 0.703 inch in maximum cross-sectional configuration and which has been cut to length is sometimes so cut because the ultimate customer intends to utilize that length, without further cutting, in a predetermined manner.

* * * * * * *

Plaintiff claims that while the merchandise is describable as wire, it is also describable as parts of radio apparatus, and, therefore, by virtue of headnote 1(iv), schedule 6, part 2, *supra*, is precluded from classification as wire and is classifiable under item 685.25, *supra*. Antennas for use in automobile radios have been held dutiable under provisions in the tariff schedules for radiotelegraphic and radiotelephonic reception apparatus and parts. *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 187, C.D. 3895, 305 F. Supp. 921 (1969).

Defendant claims that the merchandise in its imported condition is still a material, wire, and is not classifiable under item 685.25.

The imported merchandise consists of a piece of wire made to certain specifications and cut to length. It falls within the definition of wire in headnote 3(i), schedule 6, part 2B, *supra*, which includes wire cut to length. After importation, one end of the wire is chamfered and press-fitted into a small metal ball and the other end inserted into the base of an antenna or a section of a telescoping antenna. As imported, the merchandise is not a finished part of a radio antenna.

However, if it is in fact and in law an unfinished part of a radio antenna, it would be classifiable under item 685.25 as a part of radio apparatus.

Under prior tariff acts it has been held that a provision for parts includes unfinished parts, where the article has been so far advanced in manufacture as to be dedicated to a specific use and to have no other use or ultimate intendment. *United States* v. *Schenkers, Inc.*, 17 CCPA 231, 233, T.D. 43669 (1929); *Waltham Watch Co.* v. *United States* (*Jaeger Watch Co., Inc., Party in Interest*), 25 CCPA 330, T.D. 49425 (1938); *Steinway & Sons* v. *United States*, 23 Cust. Ct. 30, C.D. 1185 (1949); *Geo. S. Bush & Co., Inc.* v. *United States*, 32 Cust. Ct. 316, C.D. 1620 (1954), and cases cited.

Interpretative rule 10(h) of the tariff schedules of the United States provides that "unless the context requires otherwise, a tariff description for an article covers such article, * * * whether finished or not finished." Accordingly, it has been held under the tariff schedules that unfinished drill collars are classifiable as finished parts for boring machinery and that unfinished tool tips and inserts are classifiable as machinery parts of porcelain. *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4311 (1972), *aff'd sub nom.*, *United States* v. *The Servco Company*, 60 CCPA 137, C.A.D. 1098, 477 F. 2d 579 (1973); *American Feldmuehle Corp. et al.* v. *United States*, 64 Cust. Ct. 462, C.D. 4021 (1970). *Cf. United States* v. *J Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D., 1013, 436 F. 2d 1390 (1971), and *John V. Carr & Son, Inc.* v. *United States*, 66 Cust. Ct. 316, C.D. 4209, 326 F. Supp. 973 (1971), where the rule was held inapplicable in view of an expressed policy of Congress.

It follows that merchandise which has progressed to the point of being an unfinished part of an article is precluded from classification under schedule 6, part 2, by headnote 1(iv), where it is elsewhere provided for as a part unless the context requires otherwise.

In the instant case, however, while plaintiff claims that the merchandise is identifiable as an unfinished part of a radio antenna, defendant contends it is still material.

The general rule is that a thing may be classed as an unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit for use as that article and is incapable of being made into more than one article or class of articles. *United States* v. *Schenkers, Inc., supra; American Import Co.* v. *United States*, 26 CCPA 72, 74, T.D. 49612 (1938); *F. W. Myers & Co., Inc.* v. *United States*, 57 CCPA 87, 90, C.A.D. 982, 425 F. 2d 781 (1970); *Finn Bros. Inc.* v. *United States*, 59 CCPA 72, 75–76, C.A.D .1042, 454 F. 2d 1404 (1972).

Whether particular merchandise is a material or an unfinished article or part is a question which has been before the courts on many occasions, with differing results depending upon the facts and the statutory language in each case. *United States* (*American Sponge & Chamois Co., Inc., Party in Interest*) v. *Nylonge Corporation*, 48 CCPA 55, 61, C.A.D. 764 (1960). "The exact point in the processing of raw material at which it becomes a partly finished article or manufacture is a matter which must be determined on the basis of the circumstances of the particular case involved." *J. B. Henriques, Inc.* v. *United States*, 46 CCPA 54, 56, C.A.D. 695 (1958).

In the *Nylonge* case it was held that blocks of cellulose sponge were classifiable as finished or partly finished sponges on the ground that they were sufficiently advanced toward completion of the finished product as to be dedicated to their ultimate use. The court noted that the sole purpose of the manipulations after importation were to promote the marketability of the product. See also *R. J. Saunders & Co., Inc.* v. *United States*, 54 CCPA 53, C.A.D. 904 (1967).

In the *Henriques* case, rectangular pieces of acrylic resin cut to specific sizes for use in making transparent lids for ice cream dispensers were held to be partly finished articles rather than sheets on the ground that they were not adapted for any purpose other than making lids.

Other cases have held imported mechandise to be material even though used exclusively for one particular purpose or cut to specific sizes making it adaptable for a certain use. *United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933), and *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936) (a manufacture made from asbestos yarn, wire and other materials, imported in rolls, used, after cutting, only to make brake linings); *American Import Co.* v. *United States*, *supra* (silk fishing-leader gut, used, after being cut to length, and loops tied, as fishing leaders); *B. A. McKenzie & Co., Inc., et al.* v. *United States*, 47 CCPA 42, C.A.D. 726 (1959) (plywood panels, called "doorskins" in dimensions suitable for use in the manufacture of panels for flush doors); *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F. Supp. 1031 (1971) (shoe die knife steel and cutting rules used for making cutting dies.)

In *American Import Co.* v. *United States*, *supra*, the court noted (p. 75):

> The question presented is a perplexing one, the solution of which necessarily results in a somewhat anomalous situation. It cannot logically be denied that the imported article in 60-foot lengths is material for making leaders. All the witnesses agree that the only thing to be done to make the finished leader is to

> cut the material to length and, after soaking to soften the same, tie the loops. From the foregoing statement it is obvious that if the imported coils were cut to length suitable for making different lengths of leaders, they would be more nearly finished than as imported, and if in addition to cutting the same to lengths, one of the loops was tied, they would be nearer finished than as imported.

The material versus articles issue has been presented in a number of cases under prior tariff acts involving wire and wire products.

In *Boye Needle Co.* v. *United States*, 5 Ct. Cust. Appls. 43, T.D. 34009 (1913), the merchandise consisted of round steel wire closely and permanently coiled into flexible and springlike tubes of wire. The court held it was not wire but a new product, a coiled wire spring, having a use as a spring which differed from that of simple wire.

In *Gerrard Wire Tying Machines Co.* v. *United States*, 42 Treas. Dec. 256, T.D. 39341 (1922), and *M. Martinez & Co.* v. *United States*, 24 CCPA 285, T.D. 48703 (1936), it was held that baling ties composed of wire cut to length and doubled back to form a loop were not wire material but manufactured articles. In the *Martinez* case the court pointed out (pp. 291–292):

> * * * It would seem that had Congress desired baling ties, commonly used for baling hay or other commodities, to take the same rate of duty provided for all wire so commonly used, it would have specified wire "cut to lengths," etc., as was done in the case of metal hoops and bands.

However, flat wire in coils, which after cutting to the required length and heated and forged to a so-called spoon, was used in textile machinery, was held to be a material which in its imported condition had neither the form nor shape of parts of textile machines and was not dedicated to a particular use. *Dehler Signoret Corp.* v. *United States*, 7 Cust. Ct. 103, C.D. 545 (1941). See also *American Electro Metal Corp.* v. *United States*, 64 Treas. Dec. 822, Abstract 24886 (1933), holding that molybdenum wire imported in coils, used in incandescent lamps, X-ray apparatus, and ultraviolet lamps, was material which required further processing for use, and therefore could not be considered parts of articles for producing, rectifying, modifying, controlling or distributing electrical energy.

In *All America Cables & Radio, Inc.* v. *United States*, 16 Cust. Ct. 74, C.D. 987 (1946), wire imported in lengths of 17 feet and subsequently cut into shorter pieces and further manipulated for use in magnifiers in electric telegraph apparatus was held to be material and not part of such apparatus on the ground that it was not so far advanced as to be incapable of being made into more than one article and that its identity as a part was not fixed with certainty at the time of importation.

In the instant case the imported merchandise consists of wire of a certain diameter cut to length. It must be further manipulated for use as a radio antenna section. According to the stipulation, in none of the other known uses for type 302 stainless steel wire is the wire of the same diameter or length as the imported merchandise. However, it is also stated that it would have been possible to make use of wire of the same diameter and length in other applications, with some modification of the specifications. Thus, it is not clear that the imported merchandise is incapable of being made into more than one article.

Be that as it may, a reading of the pertinent provisions of the statute convinces me that in this instance, Congress has itself drawn the line differentiating material from unfinished articles or parts.

Whether merchandise is a material or an unfinished article depends to some extent on the degree of processing it has undergone. *American Import Co.* v. *United States*, *supra*. Here Congress has defined wire as including wire advanced as far as being cut to length. Bearing in mind the difficulties courts have experienced in determining the point at which a material becomes an unfinished article or part, the simplification which the Tariff Schedules of the United States was designed to provide,[1] and the fact that Congress has in this instance specified wire cut to length, I am of opinion that Congress intended that merchandise encompassed within the definition in headnote 3(i), schedule 6, part 2B, should be classified as wire and not as an unfinished article or part of an article. Thus, the fact that the instant merchandise has been cut to length and is in certain dimensions making it particularly adaptable for use in producing radio antennas does not take it out of the category wire and into that of an unfinished part. *Cf. Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972), appeal dismissed March 27, 1973, and *Trans-Atlantic Company* v. *United States*, 70 Cust. Ct. 243, C.D. 4459 (1973), where the court found that the language in a superior heading in schedule 6, part 2B, "whether or not drilled, punched, or otherwise advanced" was a clear indication that an advancement even to the point of dedication was intended to be included therein so long as the article remained material. I conclude that the merchandise herein is material and not a part, finished or unfinished, within the intendment of Congress, and therefore is not excluded from classification under item 609.45, *supra*, by virtue of headnote 1(iv), schedule 6, part 2, *supra*.

[1] Customs Simplification Act of 1954, 68 Stat. 1136, sec. 101(a)(3); *F. L. Smidth & Company* v. *United States*, 56 CCPA 77, 81–82, C.A.D. 958, 409 F. 2d 1369 (1969).

For the reasons stated, the action is dismissed. Judgment will be rendered accordingly.

(C.D. 4504)

Nishimoto Trading Company, Ltd.
Arthur J. Fritz Company } *v.* United States

Edible preparations

Japanese style alimentary paste consisting of noodles imported with a packet of soup base, and commonly known as *saimin* or *ramen*, was properly classified under item 182.95 of the tariff schedules covering "edible preparations not specially provided for (including prepared meals individually packaged)" and not as "other soup preparations" under item 182.52 of the schedules as claimed. Plaintiffs' contention that the merchandise should have been properly classified under item 182.52 as a more specific provision than item 182.95, unavailing in the absence of a finding that *saimin* or *ramen* was a soup or a soup preparation.

STARE DECISIS

The issue of whether *saimin* or *ramen* fell within the common meaning of soups or soup preparations was considered in prior cases in this court which dealt with the identical provision under which the merchandise at bar was classified. *KBS Trading Co., Ltd., American Customs Brokerage Co. et al.* v. *United States*, 296 F. Supp. 350, 62 Cust. Ct. 173, C.D. 3720 (1969); *Marukai Hawaii, Inc., et al.* v. *United States*, 66 Cust. Ct. 38, C.D. 4165 (1971). The determination therein that the merchandise was "a prepared meal individually packaged" and that it was not a soup or a soup preparation, was buttressed by the present record which not only was substantially cumulative and repetitive, but also established that *saimin* or *ramen* was eaten as a "snack or a light meal." Plaintiffs failed to present "clear and convincing" matters which warrent disregarding the persuasiveness and authority of the prior holding. See *United States* v. *Dodge & Olcott, Inc.*, 47 CCPA 100, 103, C.A.D. 737 (1960). The prior holding is "*stare decisis*" of the issue in the present case.

PRESUMPTION OF CORRECTNESS

On the basis of the present record and the records of the prior cases incorporated herein, plaintiffs failed to rebut the presumption of correctness attaching to the classification which included the presumptively correct finding that the merchandise at bar was something other than a soup or soup preparation. *United States* v. *New York Merchandise Co.*, 435 F. 2d 1315, 1318, 58 CCPA 53, 58, C.A.D. 1004 (1970); *Novelty Import Co., Inc.* v. *United States*, 53 CCPA 28, 32, C.A.D. 872 (1966).

Court No. 70/53103

Port of Los Angeles

[Judgment for defendant.]

(Decided March 18, 1974)

Glad & Tuttle (*Edward N. Glad* of counsel) for the plaintiffs.
Irving Jaffe, Acting Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

RE, Judge: The legal question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise imported from Japan, and described on the invoice as "Japanese style alimentary paste 'Sapporo Ichiban.'"

The merchandise was classified by the customs officials under item 182.95 of the Tariff Schedules of the United States as "edible preparations not specially provided for (including prepared meals individually packaged)." Consequently, it was assessed with duty at the rate of 14 per centum ad valorem.

Plaintiffs contest that classification and claim that the merchandise is properly classifiable under item 182.52 of the tariff schedules as "other soup preparations." Hence, plaintiffs contend that the merchandise is properly dutiable at the rate of 9.5 per centum ad valorem.

The pertinent provisions of the tariff schedules read as follows:

Classified under:

	Item 182.95, as modified by T.D. 68–9: "Edible preparations not specially provided for (including prepared meals individually packaged):	
* * * * * * *		
	Other:	
* * * * * * *		
182.95	Other	14% ad val."

Claimed under:

	Item 182.52, as modified by T.D. 68–9: "Soups, soup rolls, soup tablets or cubes, and other soup preparations:	
* * * * * * *		
182.52	Other	9.5% ad val."

Two prior cases have dealt with the merchandise presently before the court, and their records have been incorporated in the present case. The two prior actions are *KBS Trading Co., Ltd., American Customs*

Brokerage Co. et al. v. *United States*, 296 F. Supp. 350, 62 Cust. Ct. 173, C.D. 3720 (1969), and *Marukai Hawaii, Inc., et al.* v. *United States*, 66 Cust. Ct. 38, C.D. 4165 (1971).

That the merchandise in these three cases is of the same kind, or similar, cannot be questioned, and is acknowledged by the parties. It is adequately and accurately described in the *KBS Trading* and *Marukai* decisions. In view of these decisions, and particularly the summary of the evidence set forth in the *Marukai case*, no detailed description is required here.

Suffice it to say that the merchandise, in its imported condition, consists of a package which contains a mass of oriental type noodles, and a packet of soup base. It is prepared by boiling the noodles in approximately two cups of water. When the noodles are tender, the soup base is added. To this preparation there may be added by the consumer other available items of food such as meats, eggs, fish cakes or vegetables. It is not contested that the merchandise is a quick-cooking form of what is known as *saimin* or *ramen*. It is called *saimin* in Hawaii, and is known as *ramen* by orientals.

It is worthy of note that the package which contains the imported merchandise represents it as "Japanese Style Noodles With Soup Base." It is suggested that it be served "* * * as a luncheon," or "* * * as an evening snack." It is also represented as a "* * * meal in itself."

In the *KBS Trading* case, decided in 1969, the merchandise had been classified as an entirety as "edible preparations not specially provided for (including prepared meals individually packaged)." It consisted of "alimentary paste, packaged with packets containing soup base and sold as a unit * * *." 62 Cust. Ct. at 174. Plaintiffs claimed that the *saimin* or *ramen* should have been classified separately as alimentary paste, and as soup base. The evidence indicated that, when prepared, the importation was edible without the addition of other ingredients.

The court determined the common meaning of the words "prepared meal," which appeared for the first time in the Tariff Schedules of the United States. Judge Richardson, writing for the court, stated:

> "Plaintiffs' own witnesses have admitted the use of the merchandise at bar as a meal. Further, an examination of the exhibits reveals the merchandise is packaged and sold as a unit designed to be made into a single dish." 62 Cust. Ct. at 177.

The court, consequently, concluded that the plaintiffs had failed to overcome the presumption of correctness that attached to the classification by the customs officials, and added that the "exhibits themselves appear to be prepared meals individually packaged." Hence, the court sustained the classification, and held that the merchandise was properly

classified as "prepared meals, individually packaged." 62 Cust. Ct. at 178.

In the *Marukai* case, decided in 1971, the merchandise again consisted of packages of alimentary paste, i.e., dried noodles, with enclosed packets of soup base. As in the *KBS Trading* case it was classified as "edible preparations not specially provided for (including prepared meals individually packaged)." Plaintiffs contested the classification and claimed that it was properly classifiable as "soups, soup rolls, soup tablets or cubes, and other soup preparations."

On the question of the classification of the importation as an entirety, the court in the *Marukai* case expressed its holding as follows:

> "Accordingly, we find and hold, as did the court in *KBS Trading*, that the noodles and soup base are not separately classifiable and we overrule the protests with respect to such claim." 66 Cust. Ct. at 43.

There can be no doubt that, as stated in the *Marukai* decision, the imported merchandise "which is a new and distinct article of commerce formed by joining the alimentary paste and the soup stock" is an entirety for tariff purposes. *Ibid.*

In the *Marukai* case, citing *Crosse & Blackwell Co.* v. *United States*, 36 CCPA 33 C.A.D. 393 (1948), plaintiffs contended that the provision for "other soup preparations" is one without limitations, and therefore, includes all forms of the article. Judge Rosenstein, however, writing for the court, indicated that, for the cited *eo nomine* principle to apply, there must be a showing that the particular merchandise is so named, i.e., it must "be recognizable as a form of the named article." 66 Cust. Ct. at 44.

After setting forth some of the definitions which bear upon the common meaning of the word *soup*, the court concluded that "soup is essentially, a liquid food which may contain pieces of solid food such as meat, pasta, or vegetables." 66 Cust. Ct. at 45. Based upon the testimony and the exhibits it found that the merchandise did not "comport with the common understanding of soup preparations."

The court stated:

> "When prepared as described, the resulting product is *not noodle soup*, as plaintiffs claim, *but a flavored noodle preparation, commonly known as 'saimin' or 'ramen'*. The fact that this type food is served in a soup or saimin bowl does not make it a soup any more than chili, a well known dish prepared from beans and spices, often with the addition of meat is a soup because it is usually served in a bowl and eaten with a spoon." (Emphasis added.) 66 Cust. Ct. at 45.

Significantly, the court added:

> "Moreover, there is no evidence of record that the imported merchandise is bought, sold, or offered to the consuming public as a soup preparation. The printing on the packaged exhibits * * * describes the contents variously as 'Saimin with Soup Base', 'Japanese Style Alimentary Paste', 'Oriental Type Alimentary Paste Product' or, as * * * 'Japanese Style Alimentary Paste with Soup Base'." *Ibid.*

In view of the evidence of record the court in the *Marukai* case concluded:

> "Obviously, what is being offered is an oriental style noodle dish, not a noodle soup preparation." *Ibid.*

The court, thereupon, stated its holding as follows:

> "Plaintiffs have in no wise controverted the finding in the incorporated case [i.e., the *KBS Trading Co.* case] that 'the exhibits themselves appear to be prepared meals individually packaged.' The principle of *stare decisis* requires a like determination herein." *Ibid.*

In the present case, plaintiffs, once again relying on the *Cross & Blackwell* case, urge that since the provision for "other soup preparations" is a provision without limitations, "it takes all forms of soup preparations, including the merchandise at bar." In substance, plaintiffs assert that the importation is a soup preparation, and that such a classification is more specific than "edible preparations not specially provided for (including prepared meals individually packaged)."

Plaintiffs, in the case at bar, quote from the recent case of *Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, C.D. 4409 (1973), to substantiate their claim that "item 182.52 is more specific than item 182.95, TSUS." In the *Leaf Brands* case an importation known as "Zing," consisted of a powder composed of approximately 95 percent dextrose, plus citric acid, flavoring and coloring. It was contained in a simulated softdrink bottle and was sipped up by the user through a straw.

The quotation from the *Leaf Brands* case states:

> "At the outset, it should be noted that item 182.91—the provision under which the present import was classified—is limited to edible preparations 'not specially provided for'. Thus evidence that either item 157.10 or 155.75 is satisfied is '*ipso facto*' also evidence that item 182.91 'is not pertinent'. *Venetianaire Corp. of America* v. *United States*, 60 CCPA 75, C.A.D. 1084 (1973)." 70 Cust. Ct. at 69.

In the *Leaf Brands* case the "Zing" had been classified by the customs officials under item 182.91 as "edible preparations." The defendant

claimed alternatively that it was a flavored sugar dutiable under item 155.75. Plaintiff claimed that it was dutiable as "confectionery" under item 157.10 which specifically covered "candy, and other confectionery."

The evidence and the sample clearly established that the product was "confectionery," a term applicable to many kinds of sweet-tasting articles eaten for their taste and flavor without further preparation, and usually sold at confectionery outlets. Hence, the importation was held to be properly classifiable under item 157.10 as "confectionery." Having found that the "Zing" was, in fact, a "confectionery," the court, of course, set aside the classification of the customs officials and sustained plaintiff's claim.

It is to be noted that, pertaining to the defendant's alternative claim, the court stated:

> "Whether item 155.75 [covering sugar, etc.] is narrower in scope than item 157.10 [covering candy and other confectionery] need not be reached since the court finds that the merchandise in issue [Zing] is more than flavored sugar. It is sugar plus citric acid plus fruit flavor plus coloring which have been combined to produce a confectionery product in powder form." 70 Cust. Ct. at 74.

The court, in the *Leaf Brands* case, found that plaintiff's testimony was sufficient to establish a *prima facie* case that the product, i.e., "Zing," was "confectionery," as claimed. It added that the defendant therein "offered no proof in rebuttal to support its classification." Since the court found that the merchandise was "confectionery," clearly the *eo nomine* classification was properly made to prevail over the classification for "edible preparations."

The principle of customs law applied by the court in the *Leaf Brands* case is not in question. Clearly, if the product is specified *eo nomine* in the tariff schedules, such a classification must be applied and prevails over all others.

Here, the two prior decided cases have sustained the classification of the *saimin* or *ramen*, and have held that it is not a soup or soup preparation. Furthermore, the quotation from the *Leaf Brands* case, upon which plaintiffs rely, is inapplicable because the court in the *KBS Trading* and *Marukai* cases did not merely sustain the classification as edible preparations "not specially provided for." The merchandise was held to be "prepared meals individually packaged." As stated in the penultimate paragraph in the *Marukai* case:

> "Plaintiffs have in no wise controverted the finding in the incorporated case that 'the exhibits themselves appear to be prepared meals individually packaged.' The principle of *stare decisis* requires a like determination herein." 66 Cust. Ct. at 45.

Plaintiffs' reliance on the *Leaf Brands* case is misplaced since the *Leaf Brands* case did not deal with "prepared meals individually packaged." Its animating principle, i.e., the applicability of the *eo nomine* classification, could only apply in the case at bar if the merchandise were found to be "soups" or "other soup preparations." But this, indeed, is the fact to be proven, and two prior decisions of this court have held that it is not.

Furthermore, in the *Leaf Brands* case, the court noted that once plaintiff established its *prima facie* case the burden of proof shifted to the defendant, and the defendant therein "offered no proof in rebuttal to support its classification." Surely this cannot be said here.

In the present case plaintiffs called nine witnesses and offered 24 exhibits. One of these witnesses was plaintiffs' counsel. The defendant called eight witnesses and offered 17 exhibits. The case was tried with great vigor, and counsel deserve to be congratulated for their competence and zeal. Nevertheless, notwithstanding the voluminous record, an accurate and fair presentation or description of the product is still to be found in the decisions of the two prior cases.

If the court in the *Marukai* case had found that the merchandise was soups or other soup preparations, the present action would not have been brought. The question presently before the court, however, was squarely presented in the *Marukai* case, and the determination of the court is clear and unmistakable. The plaintiffs may not agree with the holding, but they cannot deny its import, or that it was made.

The defendant, in its brief, highlights that this is the second case where the identical question is presented, viz: whether the merchandise was properly classified under item 182.95 [182.91 in the prior case], or whether it is a soup preparation under item 182.52. It urges that plaintiffs have "shown no cause for modification of the finding" in the prior case, i.e., *Marukai*. Indeed, the defendant suggests that the additional evidence in the present case "buttresses" the finding of the prior case that the merchandise is not a soup preparation, and that the prior decision is "*stare decisis* of the issues" in the instant case.

The *stare decisis* aspect of the case can best be summarized by a quotation from the case of *United States* v. *Dodge & Olcott, Inc.*, 47 CCPA 100, 103, C.A.D. 737 (1960). The Court of Customs and Patent Appeals in that case stated:

> "While we always are open to consider all proper and pertinent matters which bear upon the issue of possible error in an earlier decision, such matters when presented must be clear and convincing. It is unfair both to the courts and to the parties litigant that there be a readjudication of issues previously determined except upon *a clear and convincing showing of error. This requirement is not satisfied by a reargument of the former issues on the same or a*

> *merely cumulative record.* We are unwilling to find error in a prior decision where, as here, the only reason advanced is that the party asserting the error does not agree with our prior decision." (Emphasis added.)

The court agrees with the defendant's statement that plaintiffs have "shown no clear and convincing error on the part of the Court in C.D. 4165 [*Marukai*] which would lead to a contrary result herein." Moreover, defendant correctly points out that:

> "The only thing that plaintiffs have accomplished in the instant action is to reargue one of the issues in C.D. 4165 and offer additional evidence of a cumulative nature, *i.e.*, opinions of witnesses on whether or not the subject merchandise is a noodle soup, and the reasons for their opinions. Considering the entire record herein, including the evidence offered by defendant in support of the classification of the subject merchandise, the decision in C.D. 4165 is sound in that plaintiffs herein – as therein – have failed to prove that the subject merchandise was incorrectly classified and that their claim is correct."

In its reply brief, plaintiffs submit that the holding in the *Marukai* case "is not *stare decisis* of the factual issues herein to be decided on the more expanded record in the present case." Plaintiffs assert that "the defect of the record noted by the court in the *Marukai Hawaii* case * * * no longer exists." The "defect," refers to the court's statement, in the *Marukai* case, that there was no proof that "the imported merchandise is bought, sold, or offered to the consuming public as a soup preparation." 66 Cust. Ct. at 45. As indicated in the court's footnote to the previous quotation an effort was made to prove this in the *Marukai* case, but the court was not persuaded. The effort was also made in the present case. Hence, plaintiffs assert: "Although noodle soup preparations such as involved herein are labeled with trade names such as 'saimin' or 'ramen,' when prepared as directed on the package, they are held out to the public as noodle soup." (Plaintiff's reply brief, p. 2)

Plaintiffs, however, *assume* that the merchandise is a noodle soup, and state that it is "labeled with trade names such as 'saimin' or 'ramen'." But *saimin* or *ramen* is not a label or a trade name. The product *is saimin* or *ramen*. That is precisely what it is called and how it is commonly known.

There is no doubt that plaintiffs attempted to cure "the defect," but the record will only show that they merely succeeded in repeating testimony and unsubstantiated opinions in the two prior cases. Although the "expanded record" may be more voluminous, the testimony of the present trial is, by and large, cumulative and the sum and substance is, therefore, the same. Perhaps new is the testimony of some of plaintiffs' witnesses, as stated in plaintiffs' brief, that "[w]hen prepared, exhibit 1 [the merchandise in issue] is eaten as a snack or light meal." (Plaintiffs' brief, p. 15.) But this fact only enhances

the persuasivenss of both the *KBS Trading* and the *Marukai* cases that the imported *saimin* or *ramen* is indeed a prepared meal individually packaged. Even on the question whether *saimin* or *ramen* is a soup, or a soup preparation, plaintiffs' witnesses were divided, and offered varying opinions of doubtful reliability.

In customs classification cases the question before the court is whether the plaintiff has succeeded in rebutting the presumptively correct classification of the customs officials. *Sanji Kobata et al.* v. *United States*, 326 F. Supp. 1397, 1399, 66 Cust. Ct. 341, 344, C.D. 4213 (1971). See also *United States* v. *New York Merchandise Co., Inc.*, 435 F. 2d 1315, 58 CCPA 53, C.A.D. 1004 (1970). In this case, as in the *KBS Trading* and *Marukai* cases, the merchandise was classified under the identical provision of the tariff schedules covering edible preparations not specially provided for (including prepared meals individually packaged). It is well established that the presumption of correctness that applies to that classification also attaches to every subsidiary fact necessary to support it. *United States* v. *New York Merchandise Co., Inc.*, 435 F. 2d 1315, 1318, 58 CCPA 53, 58, C.A.D. 1004 (1970); *Novelty Import Co., Inc.* v. *United States*, 53 CCPA 28, 32, C.A.D. 872 (1966). Hence, that classification carries with it the presumptively correct finding that the merchandise is something other than soup or a soup preparation as claimed.

The specific question presented here is whether the merchandise, "Sapporo Ichiban," admittedly commonly known as *saimin* or *ramen*, falls within the common meaning of "other soup preparations." In the *Marukai* case, three judges of this court answered this question in the negative and affirmed the classification.

Although the plaintiffs have not discharged their burden of proof in the instant case, the defendant nevertheless urges specific reasons to sustain the classification. It may be appropriate to restate some of them. Thus, *saimin* or *ramen* has a ratio of solid foods to liquid far greater than that found in noodle soup preparations distributed in the United States. This ratio is further increased by the addition of other items of solid foods that are included in the preparation prior to serving. Whereas *saimin* or *ramen* is eaten with chopsticks or a fork and a spoon, in the United States soup is hardly ever eaten with any utensil other than a spoon. Persons eating *saimin* or *ramen* will always eat all of the noodles and solid foods, but will not always drink all of the liquid. Indeed, *saimin* or *ramen* is eaten for the noodles and other solid foods that it contains. Moreover, unlike soups, which are usually consumed with other foods in a meal, *saimin* or *ramen* is usually eaten as a snack or a light one-dish meal. Hence, there is testimony that *saimin* or *ramen* is a solid food.

Plaintiffs' reliance upon the cases of *Fujii Junichi Shoten, Ltd., et al.* v. *United States*, 54 Cust. Ct. 277, C.D. 2544 (1965), and *Shirokiya*,

Incorporated, and American Customs Brokerage Company v. *United States*, 54 Cust. Ct. 463, Abs. 69374 (1965), does not require extended discussion. The merchandise in those cases, classifiable under the Tariff Act of 1930, consisted of alimentary pastes, noodles containing flavoring. However, they were not imported with a packet of soup base, as was the merchandise at bar. The merchandise, therefore, is not the same.

In summary, plaintiffs have not succeeded in presenting to the court, in the language of the *Dodge & Olcott* case, such "clear and convincing" matters that warrant disregarding the authority and persuasiveness of the *Marukai* decision. Plaintiffs' additional evidence has largely been offset by the countervailing proof that has been submitted by the defendant in support of the classification. Moreover, in a close case the court cannot ignore the presumption of correctness that attaches to the classification of the customs officials. In this case, whatever doubt may exist is resolved by the application of the doctrine of *stare decisis*. Nothing more need be added that has not already been written in the *KBS Trading* and *Marukai* cases.

In view of the foregoing plaintiffs' claim is overruled. Judgment will issue accordingly.

(C.D. 4505)

FRANK W. WINNE & SONS *v.* UNITED STATES

Binding twine

BINDING TWINE—WRAPPING AND TYING TWINE

The provision of paragraph 1622 of the Tariff Act of 1930, as amended, allowing free entry for *all binding twine* composed of various vegetable fibers and not exceeding 750 feet to the pound held limited to twine that is chiefly used for agricultural purposes and is not applicable to twine that is chiefly used for industrial wrapping or tying purposes.

Court No. 63/22868

Port of Philadelphia

[Judgment for defendant.]

(Decided March 21, 1974)

Allerton deC. Tompkins for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis* and *Andrew P. Vance*, trial attorneys), for the defendant.

MALETZ, Judge: This case involves the proper tariff classification of a shipment of sisal twine that was imported in 1963 from Mexico

into the United States via the port of Philadelphia. The twine was assessed with duty at the rate of 15 percent ad valorem under the provisions for cords and twine in paragraph 1005(b) of the Tariff Act of 1930, as modified, T.D. 51802. Plaintiff claims that the twine in controversy is entitled to entry free of duty as binding twine under the provisions of paragraph 1622 of the above act, as amended by Public Law 219, 65 Stat. 655 (1951).[1]

The relevant statutory provisions are:

Paragraph 1005(b), *supra:*	
Cords and twines (whether or not composed of three or more strands, each strand composed of two or more yarns), tarred or untarred, single or plied, wholly or in chief value of manila (abaca), sisal, henequen, or other hard fiber	15% ad val.
Paragraph 1622, *supra:*	
All binding twine, and twine chiefly used for baling hay, straw, and other fodder and bedding materials, manufactured from New Zealand hemp, henequen, manila, istle or Tampico fiber, sisal grass, or sunn, or a mixture of any two or more of them, of single ply and measuring not exceeding seven hundred and fifty feet to the pound	Free

I

The record establishes that the imported merchandise consists of one-ply, unoiled, Mexican sisal twine which measures less than 750 feet per pound, and is chiefly used for industrial wrapping and tying purposes and not for agricultural purposes or for baling hay, straw, or other fodder or bedding materials.[2] In this context, the issue is whether the term "binding twine" as used in paragraph 1622, as amended, includes twine that is chiefly used for industrial wrapping and tying purposes or whether the term "binding twine" is limited to twine that is chiefly used for agricultural purposes.

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[1] The administrative protest in the present action covers all the merchandise imported under entry 26993. However, the complaint in the action is directed only to that merchandise identified on the invoice as:

Unoiled, Clipped, Sisal Twine

Reels, 1 Ply Medium, 300 Ft. per lb.
Coils, 1 Ply Medium, 300 Ft. per lb. M. ends
Reels, 1 Ply Fine, 400 Ft. per lb.

In this circumstance, plaintiff's claims as to the remaining merchandise covered by entry 26993 are deemed abandoned.

[2] The record herein consists of (1) the record in the incorporated case, *Maher-App & Co. v. United States*, 60 Cust. Ct. 470, C.D. 3429 (1968), *aff'd Id. v. Id.*, 57 CCPA 31, C.A.D. 973, 418 F. 2d 922 (1969); and (2) the record in the present case.

II

Examination of the record in greater detail shows that the following types of twine have the quality and characteristics listed below:

Binder twine is a one-ply twine made of hard henequen or sisal fiber which is oiled and treated with insect repellent to resist rot, rodents and insects. It is manufactured to a length of 500 or more feet to the pound and is put up in either 8-pound tubes, 6 tubes to the bale, or in 5-pound balls, 10 balls to the bale. Twine of this type is chiefly used on the farm for binding and tying grains and is distributed through farm machinery and equipment dealers, farm and feed dealers, and farm cooperatives. Because it is oiled and treated with insect and rodent repellents, it cannot be used as wrapping or tying twine.

Baler twine is made of a one-ply material and ranges between 200 to 257 feet per pound; it is oiled and treated with insect repellent to resist rot, rodents and insects. Such twine is manufactured in 20-pound balls, with two balls to the bale; is much thicker, heavier and stronger than binder twine; and is chiefly used on the farm in hay balers to tie and bind bales of hay, straw and fodder crops. As in the case of binder twine, baler twine is distributed through farm machinery and equipment dealers, farm and feed dealers, and farm cooperatives. Also like binder twine, it cannot be used as wrapping or tying because of its oiled and repellent-treated condition.

Wrapping twine and tying twine are one and the same and are sometimes referred to as sisal twine. Twine of this type consists of a piece of string manufactured from fiber. It is stainless, i.e., unoiled, and is made in various put-ups, such as 10- or 20-pound balls or 50-pound reels or tubes, and also in different size bales according to customer specifications. It is white in color (although different colors may be specially ordered); is treated with a softening material; and comes in one, two or three plies in lengths of 200 and 300 or 400 feet. Wrapping and tying twine is not sold in the same channels of distribution as binder or baler twine; it is usually stronger than binder or baler twine; and it is not used for agricultural purposes but rather is chiefly used for such industrial purposes as wrapping or tying of packages; bundles, newspapers, etc.

The record further shows that the term "binding twine" is rarely used in the United States; that in the trade, agricultural twines are specifically referred to either as binder twine or baler twine, while wrapping or tying twines are referred to as such and also as sisal twines; that plaintiff's own catalogues refer to merchandise such as that involved here as wrapping or tying twine; that only in the most infrequent cases is wrapping or tying twine ordered under the name

of binding twine; that the term "binding twine" has never appeared in trade literature in connection with either binder twine or wrapping or tying twine; and that binder twine is not commercially interchangeable with wrapping or tying twine.

It is to be added that plaintiff's witnesses in the present case [3] testified that in their opinion the term "binding twine" covered *both* binder twine and wrapping and tying twine. This opinion, they testified, was based on the definition of the verb "bind" and the adjective "binding" as set out in Webster's *Third New International Dictionary* (1965 ed.). In that dictionary, the verb "bind" is defined as follows:

> bind, v.t.; 1. to make secure by tying (as with a cord) (they bound his hands) . . . 4. to tie together (as stalks of wheat) (binding the reaped wheat into sheaves) * * *

The adjective "binding" is defined in this dictionary as follows:

> 1. that binds or causes to bind: tending to bind.

Defendant's witness, on the other hand, when asked what in his opinion the term "binding twine" connoted, replied (R.131):

> Well, I think it is a play on words, a matter of semantics. We have had occasion to have the word referred to in the dictionary and as far as the dictionary is concerned, it would appear that binding things together can be accomplished with twine, but as far as the domestic twine industry is concerned, the only reference to the word binding is in connection with binding grain in shocks, as would be accomplished with binder twine.

III

With the foregoing considerations in mind, plaintiff points out that in 1951, paragraph 1622 of the Tariff Act of 1930 was amended by Public Law 219 by inserting after the words "binding twine" a comma and the words "and twine chiefly used for baling hay, straw, and other fodder and bedding materials." To understand more fully the import of this change, it is helpful again to quote paragraph 1622—this time underscoring the new matter added by the 1951 amendment:

> Par. 1622. All binding twine, *and twine chiefly used for baling hay, straw, and other fodder and bedding materials*, manufactured from New Zealand hemp, henequen, manila, istle or Tampico fiber, sisal grass, or sunn, or a mixture of any two or more of them, of single ply and measuring not exceeding seven hundred and fifty feet to the pound.

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[3] In the present case, plaintiff presented three witnesses, as follows: An employee of the plaintiff company who handled import and sales transactions; the president of the plaintiff company; and the president of a cordage importing and distributing company. Defendant called one witness who was the retired sales manager of a domestic cordage manufacturer.

With respect to this amendment, plaintiff contends that the intent of Congress in enacting it was to provide for *all* binding twine which, according to plaintiff, included wrapping and tying twine as well as twine chiefly used for baling specified agricultural commodities. In other words, plaintiff argues that in order to give significance to the word "all" as well as to the comma that appears after the words "all binding twine," the term "binding twine" embraces both agricultural (so-called binder twine) and non-agricultural twines (so-called wrapping or tying twines) that are used for binding purposes. Additionally, plaintiff asserts that decisions relating to paragraph 1622 before it was amended in 1951 are not determinative of the scope of that paragraph after it was amended.

Defendant, on the other hand, contends that a number of judicial decisions have held that to be entitled to free entry under paragraph 1622, a twine must be of a class or kind chiefly used in agricultural pursuits, and that since wrapping or tying twine is not so chiefly used, it is precluded from classification under paragraph 1622. Defendant further contends that legislative history and judicial decisions indicate that the 1951 amendment to paragraph 1622 did not enlarge its scope to include wrapping or tying twine under the term "all binding twine." For, according to defendant, the amendment was intended solely for the benefit of the American farmer and was enacted merely for clarification purposes in order specifically to cover baler twine—an agricultural twine. Finally, defendant argues that in any event, the common meaning of the term "binding twine" is a class of twine chiefly used in agriculture.

For the reasons that follow, the court agrees with defendant's position and overrules plaintiff's claim that the imported merchandise should be classified under paragraph 1622.[4]

IV

A. Over the years, there has been considerable litigation as to what merchandise is covered by the language "all binding twine" in paragraph 1622 of the 1930 Tariff Act. By way of background, we consider at the outset those cases involving that paragraph which were decided before the 1951 amendment was adopted.[5]

The first of these cases was *Geo. Wm. Rueff, Inc.* v. *United States*, 65 Treas. Dec. 740, T.D. 47033 (1934) which concerned the proper classi-

[4] Defendant also argues that the court erred in admitting into evidence certain exhibits as representative of the imported merchandise and that accordingly plaintiff has failed in its burden of proof. This argument, the court concludes, is devoid of merit.

[5] Prior to the 1951 amendment, paragraph 1622 read as follows:

All binding twine manufactured from New Zealand hemp, henequen, manila, istle or Tampico fiber, sisal grass, or sunn, or a mixture of any two or more of them, of single ply and measuring not exceeding seven hundred and fifty feet to the pound.

fication of sisal twine that met all the specifications of paragraph 1622 for binding twine and was used exclusively in agriculture on farms and in harvesting machinery to bind up sheaves of grain. However, the collector classified the twine under paragraph 1005(b) rather than under paragraph 1622 for the sole reason that it did not contain as much as 8% of oil, as required by a Treasury regulation which provided that twine was not to be classified free of duty under paragraph 1622 if it contained less than 8% of oil. The court held that the regulation was invalid as an abridgment of law, and further concluded that "the character of the merchandise * * * has been fully established as sisal *binder* twine." [Emphasis added.] 65 Treas. Dec. at 745. For these reasons, the court sustained the protest which claimed the merchandise was free of duty under paragraph 1622.

The second case was *Geo. Wm. Rueff, Inc.* v. *United States*, 72 Treas. Dec. 290, T.D. 49151 (1937) in which binder twine measuring less than 475 feet to the pound was classified by the collector under paragraph 1005(b) rather than under paragraph 1622 on the basis of a Treasury regulation which required that in order to be entitled to classification as binding twine under the latter paragraph, the twine must contain not less than 500 feet to the pound, from which the collector allowed a variation up to 5%, making a minimum requirement for binding twine of 475 feet to the pound. The court first found (72 Treas. Dec. at 293):

> The testimony taken as a whole shows that *the imported merchandise is of the character or kind wholly or chiefly used on harvesting machines for the binding of grains such as wheat, corn, rice, etc.*, and that it is so used whether it measures 750, 500, 475, or less feet to the pound. *The testimony further shows that the merchandise meets all the statutory requirements for classification as binding twine* (*which is shown to be synonymous with binder twine*) as laid down in said paragraph 1622 of said act of 1930, in that it is manufactured from sisal grass, is of single ply, and measures not exceeding 750 feet to the pound. [Emphasis added.]

The court then held that unless it was established that twine of the kind and character in question of less than 475 feet to the pound was not chiefly used for the binding of grain, the foregoing Treasury regulation was invalid as an abridgment of law. Since the government had been unable to put in any evidence of such fact, and since the testimony of the plaintiff to the contrary was uncontradicted, the court held that the case fell squarely within the court's decision in the prior *Rueff* case, *supra*, 65 Treas. Dec. 740. Accordingly, plaintiff's claim for free entry of the merchandise under paragraph 1622 as binding twine was sustained.

The next relevant case was *Independent Cordage Co., Inc.* v. *United*

States, 3 Cust. Ct. 157, C.D. 223 (1939). There, single-ply sisal twine measuring not exceeding 750 feet to the pound and containing 3% of oil and less, was classified under paragraph 1005(b) of the Tariff Act of 1930 and was claimed to be free of duty as binding twine under paragraph 1622. The court held (1) that the provision for binding twine in paragraph 1622 is an *eo nomine* designation by use and has reference to twine chiefly used on binder or harvesting machines for the binding of grain after cutting; (2) that it was shown by the record and other cases that the terms "binding twine" and "binder twine" are synonymous and interchangeable terms; and (3) that plaintiff's claim had to be overruled for failure to prove chief use. As the court said (3 Cust. Ct. at 162):

> *In the present instance there is no testimony as to what the particuar importation of twine was used for, much less that this kind or class of twine was chiefly used on binder or harvesting machines for binding grain. If "binding twine" or "binder twine" is to be regarded as an eo nomine designation by use, as above indicated by us, chief use of the merchandise on harvesting machines for binding grain is undoubtedly of paramount importance to establish its character as binding twine, apart from the other specifications called for by said paragraph 1622.* This was also indicated by us in the later case of *Geo. Wm. Rueff, Inc.* v. *United States*, T.D. 49151, decided September 1, 1937, raising the question as to the validity of the regulation of the Secretary of the Treasury (T.D. 40805) requiring that binding twine "must contain approximately not less than 500 feet to the pound." This court held this regulation also invalid for the same reason as that given in the first *Rueff* case, *supra*, and, in sustaining plaintiff's claim for free entry of the merchandise as sisal binding twine, did so *on the showing that the twine therein was of the kind or class wholly or chiefly used on harvesting machines for the binding* of grains * * *.
>
> * * * * * * *
>
> *The failure of proof on the question of chief use of the kind or class of sisal twine in the present instance is necessarily fatal to plaintiffs' claim, especially as its own witness Bancroft testified on cross-examination that his definition of binding twine would be a good definition of one-ply wrapping twine* * * *. [Emphasis throughout added.]

To similar effect as *Independent Cordage* is *Alberto Vales* v. *United States*, 9 Cust. Ct. 219, C.D. 698 (1942) where plaintiff's claim for classification of sisal twine under paragraph 1622 was overruled on the basis that plaintiff had failed to prove that the importation was chiefly used on harvesting machines for the binding of grain.

To sum up, the foregoing decisions make it clear that the term "binding twine" in paragraph 1622 was used synonymously and

interchangeably with the term "binder twine." Further, on this aspect, it is to be noted that since 1896 binding twine has been allowed entry free of duty and "[w]henever, in the years intervening * * * the provision was the subject of congressional or Tariff Commission consideration, the phrases 'binding twine' and 'binder twine' appear to have been employed interchangeably, although the latter phrase predominates throughout." *Geo. Wm. Rueff, Inc.* v. *United States*, 28 Cust. Ct. 84, 91, C.D. 1392 (1952), *aff'd sub. nom. United States* v. *Geo. Wm. Rueff, Inc.*, 41 CCPA 95, C.A.D. 535 (1953). Finally, it is important to observe that the purpose of allowing duty-free entry of binding twine was to aid the American farmer. As this court pointed out in *Rueff* (28 Cust. Ct. at 90):

> An examination into the circumstances surrounding congressional action in removing binding twine from the dutiable schedules reveals that it was the desire of the Congress to alleviate the unfortunate economic plight in which the American farmer then found himself, a condition which, in a measure, was aggravated by the protective tariff system. To permit the farmer a more profitable enjoyment of the fruits of his hard and continuing labor, the import tax upon certain articles and materials, including binder twine, was removed.

B. Against this background, we consider now the 1951 amendment to paragraph 1622. The factor that gave rise to this amendment was a ruling issued by the Commissioner of Customs in October 1945 that baler twine—i.e., twine used chiefly in hay balers to tie and bind bales of hay, straw and fodder crops—was not entitled to duty-free entry under paragraph 1622, but rather was classifiable under paragraph 1005(b) and thus dutiable at 15 percent ad valorem. To overcome that ruling—which was in the process of litigation[6]—Public Law 219 was enacted in 1951 to add to paragraph 1622 a provision for baler twine. Examination of the legislative history makes it clear that the amendment was neither intended to change nor changed the basic purpose of the scope of the paragraph—which was to benefit the American farmer by allowing duty-free entry of agricultural twine. For one thing, the very name of H.R. 1005, which subsequently became Public Law 219, is significant. It was "A bill to amend the Tariff Act of 1930 to provide for the free importation of twine used for baling hay, straw, and other fodder and bedding material." See 97 Cong. Rec. 110 (1951). It was not "A bill to provide for the free importation of wrapping or tying twine." Beyond that, the specific intent of Congress was expressed in the general debate on H.R. 1005 in the House of Representatives. 97 Cong. Rec. 11263–11284, 11398–11416

[6] The litigation then in process was *Geo. Wm. Rueff, Inc.* v. *United States, supra*, 28 Cust. Ct. 84, *aff'd* 41 CCPA 95.

(1951). Thus, the debate made the following facts clear as to congressional intent:

1. The purpose of the bill was to provide the same duty-free treatment for baler twine as had been granted to binder twine since 1896;
2. The bill was for the benefit of the American farmers and was supported by the four major farm organizations;
3. Binder and baler twine were the two major kinds of agricultural binding twines, though baler twine did not come into use until 1939;
4. Both binder and baler twine were used by the same farmers in harvesting crops;
5. The bill was not designed to establish any new policy in tariff matters but would be in accord with the established policy of Congress to admit agricultural commodities and implements free of duty;
6. The language of paragraph 1622 was broad enough to include all agricultural twine, both binder and baler twine, on the free list. However, because of the Bureau of Customs ruling that baler twine was subject to a duty of 15 percent ad valorem, legislative recourse was the only proper and quick answer to establishing congressional intent;
7. When Congress used the word "binding twine" instead of "binder twine" in the Tariff Act of 1930, the basic purpose was to cover materials used by farmers in the binding of their crops during harvest;
8. The purpose of H.R. 1005 was to provide for the free importation of baler twine by clarifying the intent of Congress in paragraph 1622.

Also during the course of the House debate, Representative Wilbur Mills, a member of the Ways and Means Committee, reiterated that H.R. 1005 was for the benefit of the farmers; that it had been a congressional bipartisan policy of long standing to keep farm supplies and equipment used by the farmer in his farming operations on the duty-free list; and that farm organizations had urged the legislation, since they desired to put baler twine on the free list where they believed it was intended to be by the action of Congress in 1896. 97 Cong. Rec. 11274–11275 (1951). He further informed the House (*Id.* at 11275) that—

> The Tariff Act of 1930, and previous acts, recognize the various products of the cordage industry, paragraph 1005(a) provides for cordage—rope—and *paragraph 1005(b) provides for wrapping or tying twines.* Cordage, rope, *wrapping, and tying twines are all subject to import duties. Paragraph 1622 provides for all binding twines—agricultural twines—which are exempt from import duties.* [Emphasis added.]

Senate Report No. 1050, which accompanied H.R. 1005 (2 U.S. Code Cong. and Adm. Serv., 82d Cong., 1st Sess., pp. 2467–2469 (1951)), similarly made clear that the purpose of the bill was for the benefit of the farmer. Thus, the report pointed out (*Id.* at 2468):

> * * * [T]here is no just basis for distinguishing between the tariff status of such essential commodities of similar use on the farm as binder twine, baling wire, and baler twine. This bill will place baler twine on the same duty-free status as binder twine and baling wire, which is in accord with the established policy of Congress to admit agricultural commodities and implements free of duty.

From the foregoing there can be no doubt that the only purpose of the 1951 amendment to paragraph 1622 was to aid the farmer by insuring duty-free treatment for baler twine. Indeed, to construe the amendment as providing duty-free treatment for wrapping or tying twine would be to completely ignore congressional intent.[7]

C. The next relevant event following enactment of the 1951 amendment was the decision by our appellate court in *United States* v. *Geo. Wm. Rueff, Inc.*, 41 CCPA 95, C.A.D. 535 (1953). The sole issue in that case—which arose prior to the 1951 amendment—was whether the term "all binding twine" in paragraph 1622 was intended to cover only "binder twine" or whether it was flexible enough to include baler twine used in harvesting operations for tying or binding purposes. In affirming the decision of this court which sustained the plaintiff's protest for duty-free entry under paragraph 1622, the appellate court stated (41 CCPA at 100–101):

> *Coming then to an interpretation of the term "binding twine," as used in paragraph 1622, there is no doubt in our minds as to the validity of the Government's contention that the term has been used synonymously and interchangeably with the term "binder twine" in judicial decisions as well as in Congressional proceedings.* However, it does not necessarily follow that such use of the terms precludes admission of the involved twine into the provisions of paragraph 1622. The definitions cited by the trial court show that the term "binding twine" is not limited solely and exclusively to the tying or binding of small grains, but are flexible enough to include twine of the instant type in harvesting operations for tying or binding purposes.
>
> While there are, as pointed out above, some differences in the physical composition of the two twines, at the same time they also possess many similar physical characteristics as well as in the common use to which they are put. *Both are used in what are*

[7] Plaintiff argues (Br. p. 11) that if Congress intended in the 1951 amendment to limit paragraph 1622 to include only agricultural twine, it would have extended the term "twine chiefly used for baling hay, straw, etc. to binding twine." However, plaintiff says, Congress did not do so but rather "went to the trouble of evidencing its intent by placing a comma after the words 'all binding twine.'" In this circumstance, plaintiff contends that "[a]s thus amended by Congress the agricultural limitation placed upon other things mentioned in the paragraph was not extended to binding twine." The difficulty with this argument is that inasmuch as wrapping or tying twine was *never* within the scope of paragraph 1622, Congress did not have to add additional language to the words "all binding twine" to include only agricultural twine. Further, it is clear from the legislative history of the 1951 amendment and the other sources referred to previously, that over the years the term "all binding twine" was intended to cover only agricultural twine.

clearly agricultural pursuits, viz, in the binding of small grains and in the baling of hay. * * *

While it is true the involved twine was not in existence when the Tariff Act of 1930 was enacted, it is axiomatic that Congress legislates for the future as well as for the present, and we must assume that Congress, in writing the instant paragraph, imposed therein all of the limitations which it intended that class and kind of merchandise to bear. Clearly, it was not necessary for Congress to employ the word "all" unless it intended that word to encompass *all* of the twine which met the specific requirements thereof. We are in agreement with the trial court that the involved twine meets those limitations and that paragraph 1622 should control.

Moreover, it is our view that to hold otherwise would result in an anomalous and undesirable situation. For example, a farmer using binding twine in the agricultural pursuit of harvesting small grains would be using a twine completely free of duty, whereas his neighbor across the fence, likewise engaged in an agricultural pursuit, the baling of hay, and using a twine meeting the physical specifications of the same paragraph under which the binding twine was entered, would be compelled to pay a duty. If Congress intended, as both the trial court and this court believe to be the case, *that the instant paragraph was enacted for the benefit of the farmer in his agricultural pursuits, then such a situation would be absurd.* We concur with the view of the Customs Court that the language of paragraph 1622 is clearly broad enough to avoid such an anomaly.

* * * * * * *

We note in the briefs of the parties that great emphasis is placed upon the probable reasons for the enactment of Public Law 219 (approved October 25, 1951) in which Act paragraph 1622 was amended by adding the words "and twine chiefly used for baling hay, straw and other fodder and bedding materials."

Counsel for the Government and *amicus curiae* urge that such action is evidence that the original paragraph did not include twine such as that at bar.

Appellee, on the other hand, urges that such amendment is evidence that Congress intented only to clarify its original intent and to void the ruling of the Commissioner of Customs which, in 1945, placed twine such as that at bar under paragraph 1005(b).

* * * *We believe the circumstances here are more than ample to support our conclusion that Congress intended only to clarify the language orignally employed in paragraph 1622.* [Emphasis throughout added.]

The holding in *Rueff* (41 CCPA 95) was reaffirmed in *Bob Stone Cordage Co.* v. *United States*, 51 CCPA 60, C.A.D. 838 (1964) where the court concluded that imported binding twine had to be of a class or kind chiefly used in agricultural pursuits in order to qualify for

free entry under paragraph 1622, as amended in 1951 by Public Law 219. *Id.* at 69. In view of this consideration, the court affirmed the overruling of a protest—which claimed that merchandise invoiced as "binder twine" was such twine as was encompassed by paragraph 1622, as amended—on the principal ground of a failure to show that the uses of the importations were *chiefly agricultural.*

The last decision of relevance was in *Maher-App & Co.* v. *United States*, 57 CCPA 31, C.A.D. 973 (1969) where the issue was whether the importation constituted such twine as came within the description "binding twine" in paragraph 1622, as amended. The appellate court agreed with this court that plaintiffs had offered no proof that twine possessing the characteristics of the importation in question was chiefly used on the farm and therefore affirmed this court's decision and judgment overruling the protest.[8]

Thus it is clear beyond question that both this court and the Court of Customs and Patent Appeals are in agreement that Congress intended to enact paragraph 1622 and the 1951 amendment for the benefit of the farmer in his agricultural pursuits. Likewise, it is equally clear that the 1951 amendment merely clarified the language originally employed in paragraph 1622 by adding a provision for baler twine—a twine chiefly used in agriculture. In view of these considerations, the courts have consistently held that to come within the provision for "all binding twine" in paragraph 1622, even as amended, the twine must be of a class chiefly used in agricultural pursuits. Obviously, the wrapping and tying twine here in controversy does not belong to such a class since it does not consist of agricultural twine; cannot be used interchangeably with agricultural twine; and is chiefly used for industrial wrapping or tying purposes rather than for agricultural purposes.

V

Since Congress intended that only agricultural twine be considered "binding twine" under paragraph 1622, the common meaning of the term "binding twine" is irrelevant. For "[t]he master rule of construction in the consideration of all statutes is so to interpret them as to carry out the legislative intent, and any rule of construction must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rule." *United States* v. *Herman H. Sticht & Co.*, 22

[8] Two of the appellate judges in *Maher-App* dissented on the ground that the record, in their view, showed that the importation was of a class used exclusively for agricultural purposes. 57 CCPA at 40–43. In other words, the disagreement of the dissenting judges was with the majority's interpretation of the testimony, not with the requirement that to come within the provision for "all binding twine" imported twine must be of a class chiefly used in the agricultural pursuits of tying grains or harvesting. 57 CCPA at 42.

CCPA 40, 44, T.D. 47048 (1934). See also e.g., *United States* v. *Damrak Trading Co., Inc.*, 43 CCPA 77, 79, C.A.D. 611 (1956). But even assuming that common meaning is relevant, it is apparent that the common meaning of the term "binding twine" does not refer to wrapping and tying twine such as is involved here.

In the first place, dictionaries specifically define "binding twine" in terms of agricultural twine and not in terms of wrapping or tying twine, or twine generally. Thus Webster's *New International Dictionary of the English Language* (1927 ed.) defines "binding twine" as follows:

> Binding twine. A coarse slack-twisted twine or thin rope used in harvesting machines to bind the grain after cutting.

Webster's *New International Dictionary of the English Language* (2d ed., 1948) defines "binding twine" as "binder twine," and "binder twine" as:

> A coarse slack-twisted twine or thin rope used in binding, esp. in tying grain after cutting.[9]

Considering that there is a specific definition in the dictionaries for the term "binding twine," there is no sound reason for ignoring it and resorting to the extremely broad and all-encompassing definitions of the words "to bind" and "binding."

Nor does the record indicate that "binding twine" is a comprehensive term that includes both binder twine and wrapping and tying twine. To the contrary, the record (as previously observed) shows (1) that in the trade agricultural twines are referred to as binder or baler twines, while wrapping or tying twines are referred to as such and also as sisal twines; (2) that the term "binding twine" is rarely used in the trade; (3) that trade literature has never referred to wrapping and tying twine as "binding twine"; and (4) that only in the most infrequent cases is wrapping or tying twine ordered under the name of binding twine. The record further shows that agricultural twines are not commercially interchangeable with wrapping and tying twines, are not sold through the same channels of distribution, differ in a number of physical characterisics, and are used for different purposes.

In short, by definition, physical characteristics, usage and trade nomenclature, wrapping or tying twine belongs to an entirely different class or kind of twine from agricultural twine and is not generally known or referred to as "binding twine." Thus, it is evident that wrapping or tying twine does not come within the common meaning of the term "binding twine."

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[9] To similar effect are the definitions in Webster's *Third New International Dictionary* (2d ed., 1963) of "binding twine" and "binder twine."

VI

In summary, the foregoing shows that Congress never intended to provide for duty-free entry for any twines other than agricultural twines. Furthermore, the common meaning of the term "binding twine" does not include non-agricultural twines such as wrapping or tying twines. Accordingly, it is concluded that since the imported merchandise does not belong to a class or kind of twine which is chiefly used in agricultural pursuits or harvesting, it was properly classified under paragraph 1005(b) of the Tariff Act of 1930. Plaintiff's claim for classification under paragraph 1622, as amended, is therefore overruled and judgment will be entered accordingly.

(C.D. 4506)

WESTERN DAIRY PRODUCTS, INC. *v.* UNITED STATES

Articles of milk—Edible preparations

MATERIAL

Not every chemical change or chemical reaction involved in the processing of a material changes the material into an entirely different form of material in the tariff sense descriptively classifying articles wholly or in chief value of a named material.

ARTICLES WHOLLY OR IN CHIEF VALUE OF MILK

Calcium reduced dried skim milk, concededly an edible preparation used as an ingredient in sausage making, is manufactured from fluid skim milk that contains relatively more calcium ions than sodium ions, and common salt. The chemical reaction involved in the ion exchange processing of the fluid skim milk material and common salt into calcium reduced dried skim milk containing relatively more sodium ions than calcium ions did not change the chemistry of the milk in a manner that it became an entirely different material, but merely modified the ions in the milk in a manner that the calcium reduced dried skim milk remained simply and essentially an article wholly or in chief value of milk.

ARTICLES OF MILK—IMPORT RESTRICTIONS

Plaintiff having failed to establish that calcium reduced dried skim milk is not an article of milk subject to license and import restrictions proclaimed pursuant to section 22 of the Agricultural Adjustment Act as provided for in TSUS Appendix, part 3, action complaining of customs decision refusing to release calcium reduced dried skim milk for consumption in the United States without a license is dismissed.

Court No. 72-12-02554

Port of San Francisco

[Judgment for defendant.]

(Decided March 22, 1974)

George Bronz (*Edward J. Farrell* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

LANDIS, Judge: This action by plaintiff in this court follows denial of plaintiff's protest filed with the district director of customs complaining of the latter's refusal to allow the withdrawal from warehouse of certain merchandise imported from New Zealand into the port of San Francisco described as "'SAVORTEX' CALCIUM REDUCED DRIED SKIM MILK" (hereinafter CRDSM).

The refusal of customs to release the merchandise for consumption on plaintiff's presentation of a "Warehouse Withdrawal for Consumption" form was due to plaintiff's failure to obtain a duly authorized license from the Secretary of Agriculture. Customs took the position such a license was necessary on the basis that under the Tariff Schedules of the United States (TSUS)[1] CRDSM is classifiable as an article of milk subject to the license requirements proclaimed by the President in a proclamation pursuant to section 22 of the Agricultural Adjustment Act.[2]

Plaintiff filed complaint alleging that the imported CRDSM (used as an ingredient in sausage making) does not require a license from the Secretary of Agriculture because it is classifiable under TSUS not as an article of milk, but as an edible preparation, not specially provided for, dutiable under item 182.95.

Defendant filed answer to the complaint. Defendant's argument virtually concedes that the imported CRDSM is an edible preparation but defendant has denied plaintiff's allegation that the CRDSM does not require a license and further denied plaintiff's allegation that it is classifiable under TSUS not as an article of milk. Issue is, therefore, joined as to whether CRDSM is an article of milk.

Administrative provisions for carrying out the President's proclamation, heretofore referred to, are incorporated in an Appendix to TSUS. Relevant to the pleadings in this case, the TSUS Appendix, part 3, provides in pertinent part as follows:

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[1] 19 U.S.C., section 1202.
[2] 7 U.S.C., section 624.

APPENDIX TO THE TARIFF SCHEDULES

* * * * * * *

Part 3. – ADDITIONAL IMPORT RESTRICTIONS PROCLAIMED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

Part 3 headnotes:

1. This part covers the provisions proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 USC 624), imposing import fees, herein referred to as duties, and quantitative limitations on articles imported into the United States. * * *

* * * * * * *

3. (a) Dairy products—

(i) Imported articles subject to the import quotas provided for in items 950.01 through 950.16, except 950.06, may be entered only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture, and only in accordance with the terms of such license; * * *.

* * * * * * *

Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period:

* * * * * * *

Dried milk, dried cream, and dried whey provided for in part 4 of schedule 1:

* * * * * * *

950.02 Described in item 115.50 * * *

* * * * * * *

950.11 Malted milk, and articles of milk or cream, provided for in item 118.30, part 4D, schedule 1 * * *

TSUS Appendix items 950.02 and 950.11 cover dairy products classified in TSUS, schedule 1, part 4, in pertinent part as follows:

SCHEDULE 1. – ANIMAL AND VEGETABLE PRODUCTS

Part 4. – Dairy Products; Birds' Eggs

* * * * * * *

Subpart A. – Milk and Cream

Subpart A headnote:

1. The term "milk and cream", as used in this subpart, includes whole milk, skimmed milk, butterfat, and cream, except cream described in subpart B of this part.

* * * * * * *

	Dried milk and cream:			
* * *	Buttermilk containing not over 6 percent of butterfat	*	*	*
	Other:			
115.50	Containing not over 3 percent of butterfat	*	*	*

* * * * * * *

Subpart D. – Other Milk Products

* * * * * * *

118.30	Malted milk; and articles not specially provided for, of milk or cream	*	*	*

Plaintiff's claimed item 182.95 is in schedule 1, part 15, subpart B of TSUS which provides, in pertinent part, as follows:

SCHEDULE 1. – ANIMAL AND VEGETABLE PRODUCTS

Part 15. – Other Animal and Vegetable Products

* * * * * * *

Subpart B. – Edible Preparations

Subpart B headnotes:

1. *This subpart covers preparations fit for human consumption not provided for elsewhere in schedule 1.* [Emphasis added.]

* * * * * * *

	Edible preparations not specially provided for (including prepared meals individually packaged):			
* * *	Of gelatin	*	*	*

* * * * * * *

182.95	Other	*	*	*

The issue in this case, namely, whether CRDSM can be entered for consumption in the United States without a license, is determined by the classification of CRDSM under TSUS. A substantial part of the briefs on both sides is devoted to argument relating to defendant's position that CRDSM is classifiable as the licensed product dried skim

milk under item 115.50. However, the question as to the necessity of the issuance of a license in this case, requires the court to decide nothing more than whether CRDSM is an article of milk (subject to license).

Plaintiff concedes that the expression "articles of milk" is intended to classify articles wholly or in chief value of the named material milk.[3] It matters not, therefore, whether CRDSM is the article of milk specially provided for as dried skim milk dutiable under item 115.50, or an article not specially provided for of milk dutiable under item 118.30, the result being the same, since both such item classifications are subject to license pursuant to Appendix items 950.02 and 950.11, *supra*.[4]

What I proceed to look for and weigh in this record, therefore, in order to determine whether plaintiff can prevail, is proof that CRDSM [concededly an edible preparation] is in the tariff sense an edible preparation not specially provided for as an article wholly or in chief value of the material milk. That proof is necessary because plaintiff's claimed schedule 1 item 182.95 classifies only those edible preparations *not specially provided for elsewhere in schedule 1*. The schedule 1 provision for articles of milk dutiable under item 118.30 quite obviously, in my opinion, includes edible preparations wholly or in chief value of milk.[5] On the record, as heretofore stated, it is conceded that CRDSM is an edible preparation[6] and I reserve for discussion, on the basis of the record hereinafter summarized, determination of whether CRDSM requires a license as an edible preparation specially provided for as an article of milk.

The proofs consist of a sample of CRDSM and a sample of nonfat dry milk (exhibit 10), used by plaintiff's witness to demonstrate the differences between the two products; printed materials (i.e. documents, patents, booklet and leaflet collectively or individually marked exhibits 1 through 9 and 11 through 14),[7] and testimony of two witnesses, one for each side.

The essence of plaintiff's projected argument is that CRDSM is not classifiable as an article of milk for the simple reason that it contains no milk at all. The facts relevant to that argument are not in dispute and I shall now allude to them.

CRDSM is a patented specially prepared dried powder product

[3] TSUS, General Headnotes and Rules of Interpretation, 9(f)(1).

[4] The warehouse entry covering the imported CRDSM has not been finally liquidated for duty purposes.

[5] See, TSUS item 182.95 footnote reference to TSUS Appendix items 950.22 and 950.23 in part 3, with respect to restrictions on the importation of certain edible preparations except articles provided for by item 118.30.

[6] Defendant does not seriously argue that it is not.

[7] The exhibits add little that is material to plaintiff's argument that the product is not an article of milk.

which, in the general commerce of the product, is currently used solely as an ingredient in sausage making. It is produced by combining fluid skim milk (which contains relatively more calcium ions than sodium ions) and common salt by an ion exchange process whereby most of the calcium ions present in the fluid milk are replaced by sodium ions in a process which plaintiff's witness testified to as follows:

> Q. What are the materials that are used in the manufacture of calcium reduced dried skim milk?—A. The fluid skim milk passes through an ion-exchange resin. For all practical purposes to the eye this looks like, this material looks like grains of sand. But they have a particular property. It has the property of loosely holding to it a sodium ion or a calcium ion, depending on the predominance of the sodium or calcium in the environment.
>
> Now, what happens in the iron-exchange process is first the resin is conditioned by passing through the resin bed a solution of ordinary salt, sodium chloride. This conditions the resin and puts it as we say in the sodium state, that is the sodium from the sodium chloride attaches itself to the resin. Then the salt is washed out of the fluid with water and the resin is said to be conditioned at that point for exchange. Then the fluid skim milk is introduced to the resin bed and as it passes through the resin bed the calcium from the milk attaches itself to the resin and the resin gives off two sodium ions to the milk, which attach themselves to the protein of the milk and converts the casein protein in the milk to sodium caseinate.
>
> The process continues until the resin bed is exhausted of its available sodium ion. And in the vernacular of the trade this is said to be an exhausted resin bed.
>
> Then the process is repeated wherein salt is introduced to the resin bed, it's regenerated, sodium chloride is added back to the resin, and the process continues.
>
> In other words, it's a continuous exchange process, each process having a regeneration step in it. The sodium chloride that's used as a regenerator, of course, never ends up in the final product. It's simply a source of sodium for the regeneration.
>
> Q. Where does the sodium ion come from?—A. Salt, a salt solution.
>
> Q. Are you therefore using up some salt in the process?—A. Oh, yes, that's correct. A regenerant for the resin bed and the resulting compound during the regeneration process is calcium [sic] chloride because the calcium [sic] comes off of the resin and it's replaced by calcium. So, the effluent from the column is a calcium chloride solution which is washed down a sewer.
>
> Q. Just rejected as waste?—A. That's right.
>
> Q. What was the source of the calcium in the calcium chloride?—A. The source of calcium in the calcium chloride was that calcium which originally was present in the fluid skim milk.

Q. In the milk. And that was replaced in the fluid skim milk by what?—A. By a sodium ion from the sodium chloride regenerant.

Q. So would it be fair to say that the product, calcium reduced dried skim milk [CRDSM], is made from two materials which enter into it?—A. Yes.

Q. And those two materials are what?—A. Fluid skim milk and sodium chloride.

Q. And salt?—A. Yes.

Q. Sodium chloride. And the ion exchange process which you described, does that change the molecular structure of the constituent materials?—A. Of what?

Q. Of the constituent materials, of the raw materials?—A. Yes, it does change it.

Q. That change in molecular structure would be described as a chemical change?—A. Yes, and a physical change, yes.

Plaintiff in argument that the CRDSM "contains no milk at all" contends that the above-described process produced "a manufactured product created by a chemical reaction between fluid skim milk and common salt (sodium chloride), which created a new product, with new characteristic properties and new uses, and officially designated by a new descriptive name." It is not necessary in order to resolve this question to discuss all of what plaintiff says about CRDSM as a manufactured product. Admittedly it is a manufactured product.

The underlying stuff of the statement that CRDSM is a manufactured product (relevant to the tariff status of CRDSM as an article wholly or in chief value of milk) is plaintiff's follow-up proposition, relying solely on *United States* v. *Jovita Perez, et al.*, 44 CCPA 35, C.A.D. 633 (1957), wherein plaintiff states that:

> * * * Though skim milk was unquestionably the component material of chief value before the chemical reaction with salt, the material at the time of importation contained as its only component CRDSM, which was produced before importation, and which is not milk.

The subsidiary question that thus emerges is whether what plaintiff alludes to as a "chemical reaction" that took place in the ion exchange of calcium and sodium ions changed the milk that went into the process of producing CRDSM into a material that is not milk. That question is quite different from the issue decided in *Jovita Perez*, *supra*, as next discussed.

Jovita Perez involved flavoring syrup manufactured from a mixture of granulated refined sugar, water, flavoring, coloring and 76 pounds of acid. The sole question was whether the sugar component of chief value in the flavoring syrup, at the time of importation, and as tested by the polariscope was above 75 sugar degrees. The refined sugar that went

into the mix tested above 75 sugar degrees but between the time of mixing and the time of importation the sugar underwent a chemical change that changed the sugar to invert sugar testing not above 75 degrees. In the context of that chemical change, *Jovita Perez* held that, in the condition imported, the flavoring syrup was in chief value of the material invert sugar as claimed and not the material refined sugar or sucrose as assessed by customs.

The classification issue in this case is quite different from the classification issue posed in *Jovita Perez*. *Jovita Perez* did not involve generically identifying the material of chief value in the flavoring syrup, which was concededly sugar, but only determining what the sugar tested in terms of polariscope sugar degrees. Decision in this case turns on the identity of the material in CRDSM. It is significant, with respect to that issue, that the chemical change in *Jovita Perez* did not change the material sugar into a material of entirely different form that was not classifiable as sugar.

As far back as *Meyer et al.* v. *Arthur*, 91 U.S. 570 (1875), it has been recognized that not every "chemical change" or "chemical reaction" in a material changes the material into an entirely different form of material for tariff purposes. While the phraseology utilized in TSUS in describing "articles * * * of milk" is not exactly the same as that utilized in describing the term "manufactures of metal" both those terms classify articles in chief value of material in the tariff sense discussed in *Meyer* v. *Arthur*, *supra*, at page 576:

> When the act speaks of "manufactures of metals," it obviously refers to manufactured articles in which metals form a component part. When we speak of manufactures of wood, of leather, or of iron, we refer to articles that have those substances respectively for their component parts, and not to articles in which they have lost their form entirely, and have become the chemical ingredients of new forms. The qualification which is added to the phrase "manufactures of metals"—namely "manufactures of metals of which either of them" (that is, either of the metals) "is the component part of chief value"—corroborates this view.

Pertinent to plaintiff's argument that the exchange of calcium and sodium ions in the fluid skim milk involved a chemical reaction that produced a new material (CRDSM) that contains no milk at all, the *Meyer* case held that white lead, nitrate of lead, oxide of zinc, and dry and orange mineral are not manufactures in which metals form a component part because:

> The truth is, that, in the nature of things, a metal and its oxide or sulphate are totally distinct and unlike. Any substance subjected to a chemical change by uniting with another substance loses its identity: it becomes a different mineral species. The basis of common clay is the metal aluminum, and the basis of lime is

the metal calcium. But no one would think of calling clay and lime metals; nor, if artifically made, would he call them manufactures of metal. They have lost all their metallic qualities. In just the same manner, iron ceases to be iron when it becomes rust, which is oxide of iron; or when it becomes copperas, which is sulphate of iron. None would think of calling blue vitriol copper. So white lead, nitrate of lead, oxide of zinc, and dry or orange mineral, are not metals: they have no metallic qualities. In the poverty of language, they have no distinct names, it is true, as lime and clay and vitriol have; but each is designated by a scientific periphrasis, in which the name of the metal which forms one of its chemical elements is used. This use of the name has probably been one cause of the confusion which has arisen on the subject.[8] [P. 577.]

The *Meyer* v. *Arthur* statement that any substance subjected to a chemical change *by uniting with another substance* loses its identity carries the same thought as the court of appeals statement, albeit in a different classification context, that "[a] chemical compound necessarily implies not a mere mingling of components, but a chemical combination of them, resulting in their destruction as distinct entities and in the development by chemical reaction of a new substance possessing properties radically different from those of its constituent elements," *United States* v. *Rockhill & Vietor et al.*, 10 Ct. Cust. Appls. 112, 113, T.D. 38374 (1920) (holding that a product commonly used in soap making, processed from fish oil in a manner that nickel used in the process catalytically facilitated a chemical reaction whereby the oil, already composed in part of hydrogen, took on a slightly increased percentage of that element, was properly classifiable as fish oil rather than as a chemical compound, as classified and assessed by customs).[9] Closely related to *Rockhill & Vietor* is *Bush & Co. (Inc.)* v. *United States*, 11 Ct. Cust. Appls. 246, T.D. 39076 (1922) (holding that although a soya-bean oil which has been hardened by adding to its hydrogen content is not a chemical compound, but remains the oil it originally was, as held in *United States* v. *Rockhill & Vietor*, *supra;* the chemical reaction which produced oil having properties not pos-

[8] See court of appeals comment on the force of this reasoning in connection with a product that lost its physical and chemical identity as seaweed with the result that the product was a new chemical compound different from the material, seaweed. *W. H. & L. D. Betz* v. *United States*, 26 CCPA 399, 402, C.A.D. 46 (1939).

[9] In support of the holding, the court of appeals stated as follows (pages 115–116):

> • • • It is true that the hydrogenation of the oil modified its chemical formula or symbol by a slight increase in the proportion of its constituent hydrogen, but on the other hand the essential character and qualities of the oil survived the operation, even though one of its characteristics was modified. Hydrogen is undoubtedly a chemical element, but the oil in question although of course composed of chemical elements could hardly itself be called a chemical, and the resultant product was, after all, simply and essentially the oil modified in one of its qualities, and it is far from being ejusdem generis with the substances which are enumerated in the chemical compound paragraph.

sessed by the original oil and available for uses for which the original oil was unsuitable, made it a chemically compounded oil in the tariff sense that it was not classifiable under the free entry tariff provision for oils not chemically compounded). For further discussion of cases and principles see, *Balfour, Guthrie & Co., Ltd.* v. *United States*, 5 Cust. Ct. 180, C.D. 397 (1940), which held that a product invoiced as palm oil oleine, pressed (derived by a process of pressing palm oil, which had been expressed or extracted from the fruit of the palm, wherein the palm oil was separated into two parts, one containing the major portion of the palm oil stearine and the other containing the greater portion of the palm oil oleine, the latter containing chemical elements within the range of palm oil) classifiable under the *eo nomine* provision for "Oils, expressed or extracted * * * palm," rather than as a nonenumerated manufactured article as classified by customs. On the other side, compare, *Aceto Chemical Co., Inc., et al* v. *United States*, 37 Cust. Ct. 99, C.D. 1805 (1956), distinguishing *Rockhill & Vietor, Bush & Co. (Inc.)*, and *Balfour, Guthrie, supra*, and holding cetyl alcohol, processed from crude sperm oil chemically treated in a manner that converted the sperm oil into a substance which is not oil, classifiable as a chemical compound rather than a sperm oil, refined or otherwise processed.

The "chemical reaction" to which plaintiff alludes is in fact an ion exchange. Fluid skim milk, in original form, contains substantially more calcium ions than sodium ions. In the ion exchange of calcium ions and sodium ions, the ion proportions are changed so that the resultant material contains substantially more sodium ions than calcium ions.

Analysis of the decisions discussed, *supra*, with respect to materials which have undergone chemical change in the process of producing an imported product, leads me to conclude that the ion exchange process of producing CRDSM did not change the milk material used in the process to an entirely different material. The milk was not united with a substance that chemically caused the milk to lose its identity as milk in the context discussed in *Meyer* v. *Arthur, supra; W. H. & L. D. Betz* v. *United States*, 26 CCPA 399, C.A.D. 46 (1939);[10] or *Aceto Chemical Co.* v. *United States, supra*. What occurred in the ion exchange of calcium and sodium ions is more akin to what occurred in producing the products discussed in *United States* v. *Rockhill & Vietor, supra, Bush & Co. (Inc.)* v. *United States, supra*, and *Balfour, Guthrie & Co., Ltd.* v. *United States, supra*. Since the chemistry of milk in its original form includes calcium and sodium ions, the ion exchange process did not completely change that chemistry, but merely

[10] Cited in note 8.

modified it in a manner that the resultant product (CRDSM) remained simply and essentially the milk modified in one of its ions much in the manner discussed in *Rockhill & Vietor*. The resultant product, CRDSM, may well be a different product from the original milk (in the manner of the product discussed in *Bush & Co. (Inc.)*) but the milk material used in the process of producing CRDSM cannot, in the tariff sense of the classification "articles * * * of milk," be said to have lost its identity. There is not one bit of testimony or other evidence suggesting that a material put through an ion exchange process loses its identity and becomes an entirely different material.

"The major use of ion exchange has been in water softening, in which calcium and magnesium ions, largely responsible for the hardness of water because they form insoluble compounds, are removed by a granular bed of cation exchanger and replaced by sodium ions from the cation exchanger. When the cation exchanger becomes exhausted, by no longer having sufficient amounts of exchangeable sodium left, it is regenerated by passage of an excess of a strong solution of sodium chloride through the bed, thus removing the calcium and magnesium, which are usually discarded." (Encyclopaedia Britannica, Vol. 12 (1970 ed.), p. 497.)

The ion exchange process in water softening is much the same as the ion exchange process that produced the CRDSM described in this record. Since the ion exchange process in water softening does not change the material used in the process into a material that is not water, I deduce that an ion exchange using milk as a material does not change the milk into an entirely different material.

TSUS, and the legislative history of TSUS, offer additional support for the classification of CRDSM as an article of milk. "Whey" and "yogurt" are articles of milk specifically provided for (items 118.00, 118.05, and 118.10), in schedule 1, part 4, subpart D, wherein item 118.30 provides for all articles not specially provided for, of milk. Whey is the portion that remains after separation from the curd in the process that cheese is made from milk. Yogurt is a fermented milk product. (United States Tariff Commission, Summaries of Trade and Tariff Information (1968), Schedule 1, Vol. 4, pp. 6 and 145.) Both are made from milk that has been modified by a chemical change of sorts. Under the Tariff Act of 1930 whey, which has edible uses for human consumption and nonedible uses (1968 Summary, *supra*, p. 6), was classified under paragraph 1559 (the similitude provision) and yogurt, an edible preparation, under paragraph 1558 as a nonenumerated manufactured article. (Tariff Classification Study, Schedule 1, p. 54.) The specific provisions for "whey" and "yogurt" thus indicate that schedule 1, part 4, subpart D, is intended to classify all articles wholly or in chief value of milk, be they nonedible preparations or

edible preparations for human consumption. The history of TSUS further points out that schedule 1, part 4, subpart D, is intended to bring together milk products widely separated in the Tariff Act of 1930 (paragraphs 1559 and 1558), including malted milk and "compounds of milk or cream" dutiable under paragraph 708 of the 1930 Act. (Tariff Classification Study, Schedule 1, p. 54.) Schedule 1, part 15, subpart B, on the other hand, is a "basket" provision for edible preparations not specially provided for, covering products also previously classified under paragraphs 1558 and 1559 of the 1930 Act. (Tariff Classification Study, Schedule 1, p. 251.)

The significance of the discussion on "whey" and "yogurt" is that they are nonedible and edible preparations made from milk that have been chemically changed in much the same fashion as CRDSM, as an edible preparation made from milk which has been chemically changed. It makes no difference that the chemical change that produced whey and yogurt may be considered less, greater or even different from the chemical change that produced CRDSM. The point is that TSUS specifically provides for whey and yogurt as articles (edible preparations) wholly or in chief value of milk that have been chemically modified without losing their identity in those new products. The case decisions and the ion exchange process of water softening, discussed earlier, persuade me that milk put through an ion exchange process is chemically modified but does not lose its identity in the resultant product CRDSM. Since whey and yogurt are chemically modified milk preparations wholly or in chief value of milk, it follows that CRDSM, a chemically modified milk preparation, is an article wholly or in chief value of milk, and I so hold.

Plaintiff having failed to establish that CRDSM is not an article of milk, it necessarily follows it is subject to license provided for in TSUS Appendix, Part 3, and this action complaining of the customs decision refusing to release the CRDSM for consumption in the United States without a license is dismissed.

Judgment will enter accordingly.

(C.D. 4507)

GENERAL INSTRUMENT CORPORATION *v.* UNITED STATES

HORIZONTAL OUTPUT TRANSFORMERS (FLYBACKS)—ASSEMBLED ARTICLES—AMERICAN COMPONENTS

American made products consisting of kraft paper, mylar, tape, sleeving, magnet wire, and lead wire were exported from the United States to Portugal where they were assembled along with

other components into horizontal output transformers, termed "flybacks," which were imported into the United States. United States customs officials disallowed the duty exemption provided for in TSUS item 807.00 as to the said American components.

Evidence adduced at the trial and post-trial concessions made by the government support the claimed item 807.00 treatment sought by the importer in this action as to the said American components.

Held, the duty on horizontal output transformers (flybacks) in accordance with TSUS item 807.00 must be assessed upon the full value of the imported transformers less the cost or value of the six (6) American made components in issue. *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973) followed.

Court No. 70/56833

Port of New York

[Judgment for plaintiff.]

(Decided March 28, 1974)

Lincoln & Stewart (*Eugene L. Stewart* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of horizontal output transformers, termed "flybacks" and used in color television receivers, which were exported from Portugal in 1969 and classified in liquidation upon entry at the port of New York under TSUS item 685.20 as parts of television apparatus at the duty rate of 8 *per centum ad valorem*. The plaintiff-importer alleges in its complaint that the regional commissioner of customs improperly disallowed duty allowances provided for in TSUS item 807.00 as to certain American products incorporated into the imported transformers in Portugal. The items in dispute are kraft paper, mylar, tape, sleeving, magnet wire, and lead wire.

In a footnote to its brief filed after trial of the issues raised by the pleadings, defendant, through its counsel, at p. 3 stated, among other things:

> Defendant is limiting its argument herein to the various wires in dispute. As far as defendant can discern, the remaining articles in dispute, to wit, kraft paper, mylar, tape, and sleeving, are entitled to the same treatment accorded to the anode foil, cathode foil, paper, tabs, mylar, and tape in *General Instrument Corporation* v. *United States*, 60 CCPA [178], C.A.D. 1106, [480] F. 2d [1402], 7 Cust. Bull. No. 31, p. 47 (1973).

And in the conclusion set forth in the brief defendant's counsel at p. 8 states:

> . . . Defendant concedes plaintiff's entitlement to item 807.00 treatment for the kraft paper, mylar, tape, and sleeving components of the imported articles.

In accordance with defendant's concessions the court finds that plaintiff is entitled to the duty allowance provided for in item 807.00 as to the kraft paper, mylar, tape, and sleeving incorporated into the imported transformers.

The question remaining for disposition here is whether the magnet and lead wire are also entitled to item 807.00 treatment.

The evidence in the record indicates that the disputed wire is manufactured in the United States to plaintiff's specifications for use in making coils and lead wire, and is mounted upon spools and exported by plaintiff to Portugal in that condition. In Portugal spools of magnet wire, in the same condition as exported, are despooled and machine wound around kraft paper "dummy" spools with each layer of winding being interleaved with a mylar film strip to form primary or high voltage coils. Still other spools of such magnet wire are machine wound directly onto cardboard coil forms to form convergence coils. [At some point these coil forms are also inserted into the cavity of the primary coils.] When the windings are completed the magnet wire is cut, thus separating the coils from the spooled wire. In the case of the primary coils, various taps are made at winding intervals from which leads emerge [for the purpose of carrying varying amounts of voltages to low voltage circuits in the television receiver in which the transformer is installed].

Also in Portugal lead wires [presumable drawn from spooled lead wire which is cut to length and stripped of insulating material at the ends] are soldered to the convergence coils after the winding has been completed, cut and taped. And in a final stage other lead wire is despooled, machine cut to length and stripped of insulating material at the ends, looped around the convergence coils and positioned to them by means of lead wire "sleeving" that has been treated in a chemical solution which causes the sleeving to expand and then contract around the looped wire when it dries.

The coil assemblies, which comprise the basic components of the transformer, are subjected to other processes such as baking to remove moisture and wax impregnation under vacuum. They are then ready for final assembly along with other components to form the finished transformers imported in this case. The uncontroverted testimony of Joseph Soares, manager of plaintiff's component materials and approval group, is that the wire involved in the making of these coils

was specially fabricated in the United States for use in coils, and when subjected to various tests, was found not to have lost any electrical, chemical, physical, and mechanical properties.

Plaintiff argues that the wire in issue complies with the requirements of item 807.00 so as to be entitled to the duty allowance provided for in that statute, citing the case of *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973). Defendant argues that between the time the subject wire was received abroad and the completion of the assembly process in the foreign country the wire underwent such a transformation in form, shape, character, and function as to be disqualified for item 807.00 treatment, citing the case of *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972).

TSUS item 807.00 provides for the payment of duty upon the full value of the imported article, less the cost or value of products of the United States, as to:

> Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

In C.A.D. 1106 the imported merchandise was aluminum electrolytic capacitors assembled in Taiwan, as to which the importer sought item 807.00 treatment for foil, tape, paper, tabs, and mylar produced in the United States and exported to Taiwan in *rolls* and incorporated into the making of the capacitors abroad. The steps taken in Taiwan involving the disputed materials which were utilized to produce a capacitor roll, involved (1) cutting the anode foil to a specified length from the roll as exported, (2) cutting an anode tab to length from a roll of material, (3) staking the anode tab to the cut anode foil at right angles thereto, (4) interleaving paper and cathode foil from rolls with the anode foil strip and winding them into a roll with the paper between the cathode and anode foils, (5) staking a previously cut cathode tab to the cathode foil at right angles thereto, (6) placing a length of plastic film under the anode tab, (7) adding two or three turns to the rolled-up assembly and then cutting the interleaved paper and cathode foil from the rolls, (8) securing the rolled-up paper and foil assembly against unwinding by applying cellophane tape from a dispenser, (9) immersing the rolled-up assembly in a liquid electrolyte solution, (10) removing the capacitor roll from the electrolyte and welding the cathode lead to the inside of the can, (11) attaching the anode tab to

the inside of a previously made rivet and washer assembly, and (12) inserting the rolled-up assembly into the can thus finishing the capacitor.

In sustaining the importer's claim for item 807.00 treatment of the disputed articles in C.A.D. 1106 which had been rejected in that case by the regional commissioner of customs and the Customs Court, the Court of Customs and Patent Appeals adopted a construction of the concept "assembly" which included sub-assembly operations involving the disputed articles. In this connection, the appeals court said:

> . . . The only reasonable interpretation of item 807.00 is that all elements that go into the imported final article which meet the conditions the item imposes on the fabricated components are subject to the exclusion it provides.
>
> We find that all the articles in issue here meet those requirements. Concededly all are products of the United States and all went into the imported electrolytic capacitors. The meaning of "fabricated" is broad and without doubt applies to the rolls of foil, paper, cellophane tape and plastic insulating film which obviously were manufactured articles. The articles did not lost [sic] their physical identity in the capacitor "by change in form, shape or otherwise." . . .
>
> * * * * * * *
>
> Since the only changes in the exported articles were "by being assembled" or "by operations incidental to the assembly," the items have not been "advanced in value" as prohibited by provision (c) of item 807.00

And finally, on the matter of whether the disputed items were subjected to further fabrication abroad, our appeals court in C.A.D. 1106 had this to say:

> There remains the matter of whether the items were exported "in condition ready for assembly without further fabrication." . . . The paper in the present case, and the cathode foil in one form of capacitor, were cut to length after being at least partly assembled into the capacitor roll and thus met the provision in question . . . . Although the anode foil, the cathode foil in some cases, the metal tabs and the mylar film were cut to length before assembly with the other articles, we find no reason for considering them subject to any different treatment than the articles cut after assembly. Trimming of the edges of the anode foil amounts to an operation incidental to the assembly process and not to "further fabrication" under item 807.00. . . .

In *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972), cited by the defendant, the imported merchandise was papermakers' felts exported from Canada, as to which the importer sought item 807.00 treatment for the fiber and the fabric of which the felts were composed and which were of American origin.

In sustaining the Customs Court's rejection of the importer's claim for item 807.00 treatment as to the fiber component, the Court of Customs and Patent Appeals held that the fiber component had been subjected to further fabrication abroad. Our appeals court said:

> We believe that the correct starting point for the application of item 807.00 must be the components as "exported," in the condition in which they leave the United States. The word "components" appears in the introductory clause of item 807.00 and thus a uniform treatment of the word should exist for clauses (a), (b), and (c) thereof. Clause (a) speaks of the components which "were exported" and (c) speaks of improvement "abroad" thus indicating that the condition of a "component" is considered as of its departure from the United States.

In C.A.D. 1078 the fibers were exported from the United States in the bulk, baled form, *en masse*. And as to this state or condition of the fibers, the appeals court said:

> Considering item 807.00 clause (a), we must determine whether operations performed on the exported component between its arrival abroad and the assembly, show that the component, as exported, was not "in condition ready for assembly without further fabrication." As we said in *United States* v. *Baylis Bros. Co.*, 59 CCPA 9, 451 F. 2d 643, C.A.D. 1026 (1971), "the term [assembly] is used to describe the joining or coming together of solids" Id. at [11], 451 F. 2d at 643. Accordingly, it is not until the fiber came together with the other component, the fabric, that assembly occurred. The operations performed upon the fiber component before it met up with the fabric include, at least, the opening, oiling, and carding performed upon the fiber component in Canada. . . .

And as to these interim operations, the court said:

> We find the opening, oiling, and carding operations together constitute "further fabrication" of the fiber within clause (a) of item 807.00. Without the performance of these operations, the fiber component was not ready for assembly.

The decision of the Court of Customs and Patent Appeals in C.A.D. 1078 makes clear that the critical period in determining whether work performed abroad on exported articles (for which item 807.00 treatment is sought) amounts to an "assembly" operation or a "further fabrication" is the period between the arrival of the merchandise abroad and its meeting up with other components in the foreign country.

In the instant case the record shows that the magnet wire in dispute met up immediately and right off of the spool with the kraft paper and mylar [in the case of the primary and high voltage coils] and with the coil form [in the case of the convergence coil] in the winding operation in Portugal. As such, the coil winding operation, including sever-

ance of the wire from the spool, must be deemed to be an "assembly" operation within the purview of even C.A.D. 1078 inasmuch as there were no operations performed on the magnet wire which preceded the winding operation. Moreover, a winding operation *per se* is within the concept of "assembly" as that term is used in item 807.00. See: *General Instrument Corporation* v. *United States*, *supra*. Thus, the operations performed on the completed coils which utilized the magnet wire, i.e., baking and wax impregnation, must be viewed as being operations which are incidental to an *assembly* operation, consistent with the holding of our appeals court in C.A.D. 1106 on similar facts. Therefore, while there has been a transformation of the disputed magnet wire in its movement from the state of rolled wire as exported to the state of being an integral ingredient of a completed coil, this transformation does not entail changes which fall in a category other than *assembly* or *incidental to assembly* under C.A.D. 1106.

In the case of the lead wire there has, of course, been no such transformation connected with its handling as characterized the handling of the magnet wire abroad. But unlike the magnet wire, there were interim operations performed on the lead wire in Portugal. The evidence shows that *cutting to length* and *stripping of ends* preceded attachment of lead wire drawn from the spool to the convergence coil and to the high voltage coil and plate cap assemblies. However, these interim operations do not amount to a *further fabrication* or *advancement in value* of the lead wire. Cutting and stripping of lead wire are operations comparable to cutting and trimming operations performed on disputed items in C.A.D. 1106. It follows that the disputed lead wire must be considered as being ready for assembly in the condition as exported except for operations *incidental to assembly*, i.e., cutting and stripping.

No issue arises in the case under subdivision (b) of item 807.00 relative to loss of *physical identity* of the disputed wire. And inasmuch as the foregoing disposes of issues in the case arising under subdivisions (a) and (c) of item 807.00 with respect to the wire, the court concludes that plaintiff is entitled to the duty allowance provided for under item 807.00 as to the wire as well as to the merchandise on which concessions have been made.

In view of the evidence of record, and the defendant's concessions, the court finds that the kraft paper, mylar, tape, sleeving, magnet wire, and lead wire in the imported transformers

1. were fabricated components, the product of the United States at the time of their exportation to Portugal;

2. were exported in condition ready for assembly into the imported transformers without further fabrication;

3. did not lose their physical identity in such transformers by change in form, shape, or otherwise; and

4. were not advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process.

The allegations of the complaint herein are sustained, and judgment will be entered herein accordingly.

(C.D. 4508)

BORDER BROKERAGE CO., INC. *v.* UNITED STATES

On Plaintiff's Motion for an Order That a Timely Summons Be Deemed Filed for Certain Entries

Court No. 73-10-02969

Port of Seattle

[Motion denied.]

(Dated March 29, 1974)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Andrew P. Vance*, trial attorney), for the defendant.

MALETZ, Judge: In this case plaintiff seeks an order from the court (1) that a timely summons be deemed filed with respect to six entries covered by protest no. 30043-000013; and (2) that these entries be deemed included in the present civil action which was commenced to contest denial of the foregoing protest.

The background is this. On Januray 30, 1973, plaintiff filed a timely protest (no. 30043-000013) covering 13 entries that were made during the latter part of 1972. The protest was denied on May 3, 1973. On October 29, 1973, plaintiff filed a summons in this court contesting the denial of the protest. However, the summons covered only seven of the entries involved in the protest, while the remaining six entries involved in the protest were not included in the summons. According to plaintiff, the failure to include these entries in the summons was due to inadvertence and clerical error. Such clerical error, plaintiff urges, should be excused, and a timely summons be deemed filed by incorporating therein the six entries previously omitted.

Relevant to the present controversy is 28 U.S.C. § 2631(a)(1) which provides in part that an action over which this court has jurisdiction is barred unless commenced within 180 days after the date of mailing of

notice of denial, in whole or in part, of a protest.[1] Also relevant is 28 U.S.C. § 2632(a) which provides that such an action to contest denial of a protest "shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court."

As previously mentioned, the protest in this case was denied on May 3, 1973 and the summons, which covered seven of the entries contained in the protest, was filed on October 29, 1973—one day before the expiration of the 180-day period within which plaintiff was entitled to commence a civil action to contest denial of the protest. The pending motion, on the other hand, was filed on November 19, 1973—200 days following denial of the protest. In this circumstance, defendant argues that since the present motion was filed after the expiration of the 180-day limitation period, the court lacks jurisdiction to take cognizance of the six entries that were not originally scheduled in the summons. Plaintiff contends to the contrary that the filing of a protest creates a "unitary cause of action" which embraces all entries included therein. Thus, in plaintiff's view, the mere identification of the protest number on the face of the summons serves, without more, to bring all protested entries within the scope of the resulting civil action commenced to contest denial of the protest. For the reasons that follow, I hold that the present motion is time-barred and that the court therefore lacks jurisdiction to take cognizance of the six entries that were not originally included in the summons.

At the outset, it is to be observed that under the Customs Courts Act of 1970, 84 Stat. 274, a protest *per se* is not a cause of action at all. Instead, by virtue of 28 U.S.C. § 2632(a), the denial of a protest, in whole or in part, creates a right of action. Moreover, the grouping of entries within a single protest is a matter of convenience to the importer. Indeed, Congress could have required a separate protest to be filed with regard to the liquidation of each separate entry, but chose not to do so. Thus, the protest is merely an administrative vehicle in which, as indicated below, multiple yet distinct claims may be embodied.

Pertinent on this latter aspect is *E. S. Novelty Co.* v. *United States*, 68 Cust. Ct. 374, C.R.D. 72–10, 343 F. Supp. 1364 (1972) in which a civil action was filed to contest the denial of five protests. Defendant moved to dismiss the entire action on the ground that a jurisdictional prerequisite had not been satisfied in that plaintiff had failed to pay the increased duty on the single entry covered by one of the protests. The court denied defendant's motion to dismiss the entire action but instead severed and dismissed only the protest which was jurisdiction-

[1] All references here and hereafter to the United States Code (U.S.C.) are to the 1970 edition.

ally defective. In referring to 28 U.S.C. § 1582(c),[2] the court made the following comments that are particulary in point here (68 Cust. Ct. at 375, 343 F. Supp. at 1365):

> * * * *I detect in this statute* behind all procedures and forms, *an underlying intent to allow the tariff treatment of each entry of merchandise* or even each category of merchandise *to give rise to a distinct legal claim.* It happens that considerations of convenience and economy permit the combination of legal claims at various levels, such as the existence of numerous categories of merchandise (found in one entry) in one protest [footnote omitted] or the joining of numerous entries in one protest [footnote omitted] or the joining of numerous protests in one civil action [footnote omitted]. *Nevertheless, the tariff treatment of the single entry or the single category of merchandise remains for me the most fundamental and indivisible circumstances* [sic] *which can give rise to legal claims.* [Emphasis added.][3]

Additionally, the court in *E. S. Novelty* stated (68 Cust. Ct. at 376, 343 F. Supp. at 1366):

> * * * *The* * * * *privilege of joining entries* (*insofar as they are embodied in protests*) * * * *was not intended to submerge their identities and combine them into an indivisible and homogeneous entity which must thereafter be treated as a single unit.* The correct parallel is between the joinder of claims relating to individual entries * * * and the joinder of claims in other courts. * * * [Emphasis added.]

In *Novelty Imports, Inc.* v. *United States*, 68 Cust. Ct. 362, C.R.D. 72-7, 341 F. Supp. 1228 (1972), *aff'd sub nom. United States* v. *Novelty Imports, Inc.*, 60 CCPA 131, C.A.D. 1096, 476 F. 2d 1385 (1973) the defendant moved to quash a summons and dismiss an entire civil action comprised of several protests covering a number of entries on the ground that liquidated duties had not been paid in regard to two entries covered by one of the protests included in the civil action. The court denied defendant's motion to dismiss the entire civil action but rather dismissed the action with regard to these two entries only. Bearing repetition is the following statement by the court (68 Cust. Ct. at 366, 341 F. Supp. at 1231-2):

> Under prior statutes it has been held that each invoice and entry is to be deemed and treated as a separate transaction for the appraisement of merchandise and the assessment of duties. * * *
>
> * * * * * * *

[2] 28 U.S.C. § 1582(c) provides in part that "The Customs Court shall not have jurisdiction of an action unless (1) * * * a protest has been filed * * * and denied * * *."

[3] These comments were specifically quoted with approval by the appellate court in *United States* v. *Novelty Imports, Inc.*, 60 CCPA 131, 132, C.A.D. 1096, 476 F.2d 1385, 1387 (1973).

> No different result is required by 28 U.S.C. 1582(c) and section 514 of the Tariff Act of 1930, as amended, which are drawn in the language of one protest, one entry, and one action * * *.

In light of the foregoing, it is manifest that in order for an importer to contest judicially the liquidation of an entry of imported merchandise, not only must he initially file a protest with regard to that entry (see 19 U.S.C. § 1514) (regardless of whether he chooses to file one protest to cover multiple entries or to file one protest for each separate entry), but, additionally, following denial of the protest on the administrative level, he must commence a civil action with respect to such entry by the filing of a timely summons within 180 days after denial of the protest as to that entry. See 28 U.S.C. § 2631(a). Moreover, it is self-evident that a protest need not be denied *in toto*. Thus, in a situation in which a protest is administratively allowed as to one entry, but denied as to another, the importer has no right of action in this court with regard to the former entry. Then, too, an importer may decide for his own reasons not to pursue judicially a claim as to merchandise on a particular entry, even though he may have sought a reliquidation administratively. Clearly, therefore, a summons may be limited in content to fewer entries than were covered by the administrative protest, denial of which is being challenged.

In sum, each entry is a separate transaction and an administrative decision is made with regard to each such transaction. What is more, 28 U.S.C. § 1582(a) grants the Customs Court exclusive jurisdiction of civil actions instituted by the person whose protest has been denied, in whole or in part, "where the *administrative decision* * * * involves * * * (5) the liquidation or reliquidation of *an entry* * * *." [Emphasis added.] Added to that, 28 U.S.C. § 2631(a), as discussed before, provides that:

> An action over which the court has jurisdiction *under section 1582(a)* of this title is barred unless commenced within one hundred and eighty days * * * [Emphasis added.]

Thus, any claim with regard to the liquidation of the six entries sought by plaintiff to be added to the present summons, is time-barred by statute, notwithstanding that administrative relief was sought as to those entries by way of protest.

Also worthy of note is rule 3.4(a)(3) of this court which provides:

> (a) * * * A summons in a civil action commenced to contest the denial of a protest * * * *shall set forth:*
>
> * * * * * * *
>
> (3) with respect to *each entry* of merchandise involved in a denied protest *included* in the civil action, the port of entry, the entry number, and the date of entry * * *. [Emphasis added.]

Obviously, were the court to accept plaintiff's contention that the mere identification of the protest number on the face of the summons serves to include in the resulting civil action all matters within the scope of the protest, there would be no necessity for this rule. Further, considering that 28 U.S.C. § 2632(a) provides in part that "[a] civil action shall be commenced by filing a summons in the form, manner, and style and *with the content prescribed in rules adopted by the court*" [emphasis added], it necessarily follows that plaintiff is required to file a summons as to each entry, within 180 days after denial of the protest covering each such entry. Failure in this regard defeats plaintiff's cause of action with respect thereto.

Withal, plaintiff insists that the decision in *Pharmacia Laboratories, Inc.* v. *United States*, 67 Cust. Ct. 609, C.R.D. 71–5 (1971) should govern here. In that case the issue was whether a summons was jurisdictionally defective for failure to *allege* that all liquidated duties have been paid when in *fact* the duties had been paid. Defendant argued that whether or not all duties had been paid, the failure to aver this jurisdictional fact in the summons rendered it invalid and the action should be dismissed. Plaintiff argued it was the fact and not the allegation which determined jurisdiction. The court allowed plaintiff to amend its summons to include the jurisdictional averment that all duties had been paid before the filing of the summons. In reaching this conclusion, the court stated (67 Cust. Ct. at 610):

> By statute (28 U.S.C. § 1582, as amended) the fact that all liquidated duties, charges or exactions have been paid at the time an action is filed in this court is a jurisdictional condition precedent to instituting such action. If payment of duties has not been made, the court lacks jurisdiction to entertain the action. From this requirement there can be no departure. But does it follow, as a necessary consequence, that the failure to state this fact, as distinguished from the failure to comply with this condition, constitutes a fatal jurisdictional defect?

The court then went on to point out (*Id.* at 612):

> * * * Even where essential jurisdictional *averments* are omitted from pleadings courts are empowered, if not also required, to make appropriate corrections. This is the intent and purpose of 28 U.S.C. § 1653 which provides as follows:
>
> "Amendment of pleadings to show jurisdiction.
>
> Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."
>
> * * * * * * * * *
>
> Since, in other federal forums, jurisdictional allegations are embodied in complaints, and since the *failure to state jurisdictional facts is not a fatal omission*, but can be cured by amendment, it would seem that there is no justifiable argument for denying to plaintiffs in this court an opportunity to amend that document

in which the jurisdictional statement is required. [Emphasis added.]

From the foregoing, it is clear that there is a basic distinction between the situation in *Pharmacia* and the situation here. For in *Pharmacia* the court had jurisdiction of the subject matter since the duties had in fact been paid. The only difficulty was that plaintiff had neglected to state that fact in the summons and thus failed to comply with a procedural requirement. Here, on the other hand, the court has no jurisdiction whatever of the subject matter in view of the fact that adherence to the 180-day filing requirement is an absolute jurisdictional requirement. Thus, just as the court lacks jurisdiction to entertain an action if payment of duties has not been made (see *Pharmacia*, 67 Cust. Ct. at 610), so too the court lacks jurisdiction to entertain the present motion since it was not filed within the 180-day limitation period.

For the reasons stated above, the court hereby denies plaintiff's motion for an order that a timely summons be deemed filed for the six entries in question.

(C.D. 4509)

CERTIFIED BLOOD DONOR SERVICES, INC. *v.* UNITED STATES

Nonenumerated products—Diagnostic sera

IN VITRO DIAGNOSTIC REAGENTS—FREE ENTRY

Antisera produced from rabbit blood serum by injection of antigens (human blood proteins) into rabbits, used as in vitro diagnostic reagents in immunoelectrophoresis for determining the presence of abnormal antibody proteins associated with certain forms of human cancer, known as monoclonal gammopathies, are not "therapeutic serums", "antitoxins" or "analogous biological products" within the purview of item 437.76, TSUS. *Blank* v. *United States*, 400 F. 2d 302 (CA 5, 1968) and *United States* v. *23 7/12 Dozen Bottles, 35-Cent Size, etc.*, 44 F. 2d 831, 833–34 (D.C. Conn. 1930) cited; *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956) and *Air Express International Agency, Inc., a/c Hyland Laboratories* v. *United States*, 52 Cust. Ct. 254, Abs. 68288 (1964) distinguished.

THERAPEUTIC SERUMS—COMMON MEANING

Dictionary definitions of the adjective "therapeutic" are not conclusive as to the common meaning of the provision for "therapeutic serums" in item 437.76, TSUS. However, lexicographic and other authorities describing various serums strongly indicate that "therapeutic serums" are used in vivo as immunological agents for conferring of passive immunity to certain diseases. Thus, antisera medic-

ally employed as in vitro diagnostic reagents were not "therapeutic serums" within the purview of item 437.76, TSUS.

THERAPEUTIC SERUMS—LICENSING UNDER PUBLIC HEALTH SERVICE ACT

As Congress intended item 437.76, TSUS, to "substantially correspond with the scope of the licensing requirements of the Public Health Service", it is a relevant consideration that at the time of importation of diagnostic antisera no license was issued or required by the Secretary of Health, Education, and Welfare pursuant to 42 U.S.C. § 262 in determining whether such antisera fall within the purview of item 437.76. *Tariff Classification Study Explanatory and Background Materials*, November 15, 1960, Schedule 4, part 3, p. 86; 19 CFR § 12.21 (1968).

THERAPEUTIC SERUMS—DIAGNOSTIC SERUMS—CONGRESSIONAL INTENT

The fact that in item 437.76, TSUS, Congress deemed it necessary to employ the term "diagnostic" as well as the term "therapeutic" with reference to anatomical parts indicates that Congress understood the two terms to mean something different. Moreover, when Congress intended to include in item 437.76 articles used for diagnostic purposes, it left no doubt concerning its intent. Hence, by employing only the term "therapeutic" with reference to serums, Congress clearly manifested an intent that diagnostic serums not be included as well.

"THERAPEUTIC"—LEGISLATIVE RATIFICATION OF JUDICIAL CONSTRUCTION

Legislative ratification or approval of judicial construction of the term "therapeutic" in item 437.76, TSUS, could not be assumed in the present case where the Customs Court had construed the same term under paragraph 1610 of the Tariff Act of 1930, but where the latter paragraph was worded somewhat differently than item 437.76.

ANTITOXINS—IN VITRO DIAGNOSTIC ANTISERA

An antitoxin is produced in an animal by the injection of an antigenic stimulus in the form of a toxin or toxoid, and is used in vivo to inoculate individuals to neutralize or counteract the specific type of toxin injected into the animal. The imported diagnostic antisera do not fall within the foregoing concept of an antitoxin. The antigens with which rabbits were inoculated to produce the antisera were not in the form of a toxin or toxoid, and consequently the antibodies produced in the animal's blood were not antitoxic in nature. Moreover, the diagnostic antisera were not used in vivo to neutralize or counteract a toxin.

ANALOGOUS BIOLOGICAL PRODUCTS—DIAGNOSTIC ANTISERA

The fact that the diagnostic antisera were produced from the blood of animals (rabbits) inoculated with certain antigens (which produce antibodies) is insufficient to constitute in vitro diagnostic aids for cancer as analogous to therapeutic serums and antitoxins, which are principally, if not solely, used in vivo as immunological agents for therapeutic or prophylactic purposes. *Blank* v. *United States*, *supra*, cited.

Court No. 68/54415-21133-68

Port of New York

[Judgment for defendant.]

(Decided April 3, 1974)

Sharretts, Paley, Carter & Blauvelt (*Eugene F. Blauvelt* and *Gail T. Cumins* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

NEWMAN, Judge: We are faced with a case, conceptually technical, concerning the dutiable status of certain rabbit antisera imported by plaintiff from West Germany in 1968. The merchandise was assessed with duty at the rate of 9 per centum ad valorem under the provision in item 799.00 of the Tariff Schedules of the United States (TSUS) for "Other" articles not provided for elsewhere in the tariff schedules. Plaintiff claims that the merchandise is free of duty under the provision in item 437.76, TSUS, for "Viruses, therapeutic serums, vaccines, toxins, antitoxins, and analogous biological products".

For the reasons stated below, the protest is overruled.

THE RECORD

Counsel for the parties orally stipulated at the trial that at the time of importing the antisera no license was issued or required pursuant to the Public Health Service Act of July 1, 1944, as amended, 42 U.S.C. § 262. See footnote 4.

Stephan E. Ritzmann, M.D., called as a witness on behalf of plaintiff, was Director of the Division of Experimental Pathology and Immunology, and Codirector of the Transplantation Immunology Laboratory at the University of Texas Medical Branch. Dr. Ritzmann specializes and is an expert in the fields of hematological diseases, immunology, immunochemistry, transplantation and blood banking.

Dr. Ritzmann's testimony may be summarized as follows:

The antisera were produced by Behringwerke AG. in West Germany, and consist of a fraction of the blood of rabbits which has been sensitized to certain antigens. These antigens, proteins from the blood of normal adults and from the blood of patients with certain types of cancer referred to as monoclonal gammopathies, were injected into the blood stream of rabbits. After a latent period, specimens of the rabbits' blood were drawn and assayed for potency of antibodies directed against the antigens, the proteins previously injected. If the potency and specificity of the antibodies met certain requirements,

large amounts of blood were drawn from the rabbits and the serum component was separated therefrom.

Dr. Ritzmann described the nature of serum (R. 21):

> Drawing whole blood and letting it stand in a test tube for, let's say, two hours, the blood will separate into two components, one on the bottom of the test tube consisting of mainly red cells and the second column above consisting of clear to slightly yellowish fluid referred to as serum, containing numerous serum proteins, enzymes, et cetera.

After separating the serum from the rabbits' blood cells, the serum was subjected to testing against the original antigen or protein injected into the rabbits to determine whether or not the serum reacted with it. If the serum reacted with the original antigen injected into the rabbits, a visible precipitin line indicated an antibody-antigen reaction. The strength of this reaction was determined by using one of several methods. The specificity of the antibodies was then tested to ascertain whether or not they were reacting only with the particular antigen or protein injected into the rabbits. Subsequently, additional specimens of blood were drawn from the rabbits and were tested in the same manner.

In order to provide large batches of antisera with a known antibody potency and specificity, small quantities of antisera were pooled and blended, and ultimately the antisera were aliquoted into vials containing from 0.5 to 50 milliliter volumes. This was the condition in which plaintiff imported the antisera.

The antisera are used in a technique called immunoelectrophoresis (IEP), which "is a method of choice for the diagnosis and differential diagnosis of the Monoclonal Gammopathies" (R. 24). Such differential diagnosis is necessary because "patients with one particular type of this disease, referred to as IgG, Monoclonal Gammopathies, usually respond to a particular group of drugs, chemotherapeutic drugs; whereas, those patients with IgM, Monoclonal Gammopathies, respond better to a different type of chemotherapeutic drugs" (R. 16).

In a patient with monoclonal gammopathies, certain blood cells undergo a malignant or cancerous proliferation, and there is a production of antibody proteins in abnormal amounts in the patient's blood.

When a blood sample is received for an IEP analysis the serum is first separated from the red cells. The serum is then added to an agarose coated plastic film and electrophoresized, that is to say, it is subjected to an electrical current which results in the migration of the various proteins contained in the serum into various positions. Thereafter, a specific antiserum is added to a trough which is parallel to the electro-

phoretically separated serum proteins. Then, both the electrophoretically separated serum proteins and the antiserum diffuse in the agarose medium; and where they meet an antigen-antibody reaction occurs, reflected by the formation of precipitin lines. Various precipitin patterns are evidence of the presence of abnormal serum proteins, thus permitting a differential diagnosis of the various monoclonal gammopathies.

The results of the IEP test are reported by Dr. Ritzmann to the patient's physician. Thereupon, some physicians call Dr. Ritzmann, requesting recommendations concerning further diagnostic or therapeutic steps, and he answers their inquiries. In one instance where Dr. Ritzmann made a diagnosis of monoclonal gammopathies, it was decided that the patient required two forms of treatment: chemotherapy and mechanical removal of the abnormal proteins.

The following definition of "antitoxin" in *Dorland's Illustrated Medical Dictionary* (edition not identified) was read to Dr. Ritzmann: "Antibody to the toxin of a microorganism, usually the bacterial exotoxins, that combines specifically with the toxin, in vivo and in vitro, with neutralization of toxicity". In connection with this definition the following question and answer appear in the record (R. 35):

> Q. And, in your opinion, does the imported serum or sera fall within that Dorland's Dictionary definition of "antitoxin"?—A. In a wider sense, yes, in that it is also reacting with an antigen and a toxin is nothing but a specific type of antigen against which the antibody reacts.

Additionally, the following definition of "antitoxin" in *Webster's Seventh New Collegiate Dictionary* (1967) was read to Dr. Ritzmann: "An antibody formed in the body as the result of the introduction of a toxin and capable of neutralizing the specific toxin which stimulated its production, and produced commercially in animals by injection of a toxin or toxoid, as of human disease, with the resulting serum being used to counteract the toxin in other individuals". Dr. Ritzmann agreed with this definition, "provided that it is recognized that the definition in clinical settings is usually wider than given here" (R. 35–36).

On cross-examination, Dr. Ritzmann testified that in 1968 large amounts of the antisera were used in research "in order to gain experience" (R. 55).

Defendant introduced no evidence.

In summary, the record clearly establishes the following pertinent facts: the antisera were produced by injecting antigens in the form of certain proteins from human blood into the blood stream of rabbits, and if the requisite antibody reaction occurred in the rabbits' blood

such blood was drawn from the rabbits and processed into the antisera. The antisera's sole commercial use was as a diagnostic reagent (in vitro) for the differential diagnosis of monoclonal gammopathies thereby permitting the patient's physician to use the most effective chemotherapeutic drugs to treat the disease.

Plaintiff's Contentions

1. The antisera are "therapeutic serums"; and
2. The antisera are "antitoxins".
3. Alternatively, the antisera are "analogous biological products".

Therapeutic Serums

1.

Plaintiff argues "that the imported diagnostic sera are, in fact, therapeutic sera, in that they are excusively used in the diagnosis of human blood diseases and that diagnosis is essential to medical treatment of the disease".

Defendant contends "that the provision for therapeutic serums in item 437.76, TSUS, does not encompass the serum at bar, inasmuch as the latter is not used to prevent, cure, alleviate or remedy any disease or injury".

Since there is no dispute that the antisera are "serums", we shall initially consider the meaning of the term "therapeutic". Since common meaning is involved, the court may as an aid consult dictionaries, lexicons and other written authorities. *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956).

The term "therapeutic" is defined in *Webster's Third New International Dictionary* (1966) and *Webster's New International Dictionary, Second Edition* (1950), respectively, as follows:

> therapeutic * * * of or relating to the treatment of disease or disorders by remedial agents or methods: CURATIVE, MEDICINAL <~diet> <~dose> * * * therapeutic * * * Of or pertaining to the healing art; concerned with remedies for disease; curative. Cf. PROPHYLACTIC.

Funk & Wagnalls New Standard Dictionary of the English Language (1952) gives the following definition:

> therapeutic, * * * *a.* Med. 1. Having healing qualities; curative; alleviative.

The *Modern Science Dictionary* (1959) provides the following definition:

> therapeutic. Healing, remedial, or curative.

The following definition of "therapeutic" in *A New English Dictionary on Historical Principles*, Vol. IX, part II (1919), p. 280, significantly makes a distinction in medical treatment between that which is therapeutic and that which is diagnostic:

> Therapeutic * * *
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> 1. That branch of medicine which is concerned with the remedial treatment of disease; the art of healing. * * * 1625 Hart *Anat. Ur.* 1. ii. 19 Who did likewise deuide [divide] Physicke [medical treatment] . . into two parts, to wit, that which we commonly call Therapeuticke [therapeutic] . .: and . . that part which we call Diagnosticke [diagnostic].[1]
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> 2.a. A curative agent.

Some further light on the meaning of "therapeutic" may be obtained from *United States* v. *23 7/12 Dozen Bottles, 35-Cent Size, etc.*, 44 F. 2d 831, 833–34 (D.C. Conn. 1930) wherein the court considered the meaning of the term "therapeutic" as used in a statute relating to misbranding of drug preparations (Food and Drug Act of June 30, 1906, § 8, 34 Stat. 768, amended by the Act of August 23, 1912, 37 Stat. 416). The court observed:

> * * * Therapeutic to the medical world means to heal; to make well; to restore to health. It is that branch of medicine dealing with the proper use of the right medicines in the treatment of diseases. The medical student studies "Therapeutics" for the purpose of learning about different medicines to prescribe for the many ills to which the flesh is heir, in order to assist nature to make a sick patient well. The ordinary definitions found in the dictionaries are as follows: "Having healing qualities; curative; alleviative; a medicine efficacious in curing or alleviating disease." Webster defines therapeutics as "that part of medical science which treats of the discovery and application of remedies for diseases." * * *

2.

As may be noted, in its abstract sense and unrelated to serums, the term "therapeutic" is susceptible of more than one meaning. On the one hand, the term refers to the *remedial* treatment of disease, or to a substance which is healing, curative, or alleviative; on the other hand, the term can mean: "of or pertaining to the healing art", an obviously broader definition that could include the diagnosis of disease. Cf. *Sandoz Chemical Works, Inc.*, *supra*. Under these circumstances, the meaning of "therapeutic" intended by Congress may be gleaned more accurately by ascertaining such meaning, not in the abstract sense, but rather in relation to the term "serum" which is

[1] "1625 Hart *Anat. Ur.* 1. ii. 13: Diagnosticke whose most common scope is to discerne . . . the sick and infirme from the whole". *A New English Dictionary on Historical Principles*, Vol. III, part I (1897), p. 307.

modified by the adjective "therapeutic". Accordingly, lexicographic and other materials pertaining to serums have been consulted. The following excerpts from several authorities are deemed indicative of the appropriate meaning to be ascribed to the term "therapeutic" when used to modify the term "serums", as in item 437.76.

Van Nostrand's Scientific Encyclopedia (4th ed. 1968) describes serum as follows (p. 1605):

> SERUM. The clear, slightly yellow liquid which is freed when blood is allowed to clot. The blood cells and fibrin are removed and the remaining fluid is serum. * * *
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> The antibodies, which are important in protecting against disease, are contained in the globulin fraction of the serum. Various types of sera are therefore collected from individuals who have had a given disease (convalescent sera) to use prophylactically or *therapeutically* in other individuals exposed to, or ill with, the same disease. Effective antisera are also obtained by immunizing animals such as horses and rabbits, bleeding them, and preserving the serum. *Antitoxic* sera are obtained for use against disease caused by toxin-producing bacteria such as diphtheria, tetanus, botulism, scarlet fever, etc. *Anti-bacterial* sera are used against pneumonia, meningitis, anthrax and other bacterial diseases. A *polyvalent* serum is one containing antibodies to several usually related organisms or toxins. [Emphasis added in part.]

The encyclopedia also states (p. 1605) that serum reactions "may follow the administration of *therapeutic* or prophylactic *sera* (see Immunization) to persons who have a natural or acquired sensitivity to foreign protein" (emphasis added). Under the subject "IMMUNIZATION", the following appears:

> Active immunity provides long-term protection; where immediate short-term protection is required, this may be provided by passive immunity, the transfer to the susceptible person of the serum of (usually) an animal who has previously been hyperimmunized against the infection concerned. Such a serum is sufficiently rich in antibodies to tide the recipient over the period immediately following exposure to infection, and even if complete prevention is not secured, the attack which develops may be greatly reduced in severity. Such prophylactic sera are commonly employed against diphtheria, tetanus, and gas gangrene. *Similar sera were formerly much employed for therapeutic purposes, but their use has declined with the rise of chemotherapy.* [Emphasis added.]

The Dispensatory of the United States of America (25th ed. 1955), pp. 1841–44, under the subject of "Serums and Serum Derivatives", states:

> Antibodies are produced by injecting various animals, usually horses (cattle, goats and rabbits are also used commercially), with the antigen which causes the animal to produce specific antibodies.

> Inasmuch as the blood serum of the treated animal serves as the usual vehicle by which the antibodies are transferred, the method is commonly spoken of as *serum therapy*. * * * [Emphasis in original.]
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> ANTIBACTERIAL SERUMS are the serums obtained from the blood of animals which have been immunized against particular bacteria and contain antibodies antagonistic for the latter. These serums are more complex in composition and generally less certain in their *therapeutic action* than the antitoxins. * * * [Emphasis added.]
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> * * * Due to the lack of definite standards and the uncertainty of any beneficial effects, the antibacterial serums are not employed so extensively as *therapeutic agents as are the antitoxins, though many therapeutic serums have been marketed*. [Emphasis added.]
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> *Antimeningococcic Serum*, * * *.
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> * * * Since sulfadiazine, sulfamerazine and penicillin have become available, the use of antimeningococcal serum has almost ceased. Both sulfonamides and penicillin give better *therapeutic results* than antimeningococcic serum and mortality rates of less than 8 per cent are reported. The use of these chemotherapeutic and antibiotic agents is so simple and effective that *now serum is largely reserved for the critically ill patient who is in need of all possible therapeutic assistance. In these cases, antimeningococcic serum is administered as an adjunct to sulfonamide or penicillin therapy*. * * * [Emphasis added.]

Blakiston's New Gould Medical Dictionary (2d ed. 1956), p. 1088, in defining the term "serum" notes:

> * * * The fact that the serums of immunized animals and of man contain antibodies, etc., has resulted in extensive use of serums for diagnosis, prophylaxis, and *therapy*. [Emphasis added.]

Stedman's Medical Dictionary (20th ed. 1961), p. 1349, defines "serotherapy":

> serotherapy. * * * 1. Treatment of an infectious disease by the injection of an antitoxin or specific serum. * * *

Hence, the foregoing authorities describing serums strongly indicate that "therapeutic serums" are those serums containing antibodies which are used in vivo as immunological agents for the conferring of passive immunity to certain diseases. Moreover, in determining the scope of the provision for "therapeutic serums" in item 437.76, I deem it significant that the other biological products provided for *eo nomine* in item 437.76, TSUS (viruses, vaccines, toxins, and antitoxins), are

similarly immunological agents used in vivo. See *Summary of Tariff Information* (1929), Schedule 15, pp. 2292–94.

3.

As an aid to interpreting item 437.76, TSUS, defendant cites the *Tariff Classification Study Explanatory and Background Materials*, November 15, 1960,[2] Schedule 4, part 3, p. 86, which states:

> * * * Also, the provisions of items 437.44 through 437.52, as published, relating to biologicals provided for in paragraph 1610 have been consolidated and enlarged in scope in final proposed item 437.76 to do away with certain artificial distinctions now involved and thereby make a more coherent group of related articles which ***substantially correspond with the scope of the licensing requirements of the Public Health Service and the Department of Agriculture applicable to the importation of certain biological products.*** Human blood and fractions there of [sic] and anatomical parts of the human body have been specifically added to the new provision. The rate changes involved in item 437.76 are unimportant. [Emphasis added.]

The licensing requirements of the Public Health Service mentioned in the above explanatory notes originated with the Act of July 1, 1902, ch. 1378, § 1, 32 Stat. 728, prohibiting the importation or sale in interstate commerce of any "virus, *therapeutic serum*, toxin, antitoxin or analogous product *applicable to the prevention and cure of diseases of man*" (emphasis added), unless the producer of such products was licensed by the Secretary of the Treasury.

The purpose and intended scope of the 1902 statute are reflected by the following comment in H.R. Rep. No. 2713, 57th Cong., 1st Sess. (1902), p. 2 and S. Rep. No. 1980, 57th Cong., 1st Sess. (1902), p. 2:

> This bill seeks, as indicated by its title, to regulate the manufacture and sale of certain substances of animal origin which, except vaccine virus, have but recently come into general use for the prevention and cure of disease. The purity of these substances is of far more importance than is the purity of ordinary drugs because *the former are ordinarily introduced into the circulation directly* while the latter are introduced through the digestive tract. [Emphasis added.]

In 1944, Congress reenacted the provisions of the 1902 act, with some modifications, as part of the codification of the laws pertaining to the Public Health Service. Act of July 1, 1944, ch. 373, § 351(a),

[2] The *Tariff Classification Study*, published by the United States Tariff Commission pursuant to Congressional delegation (Customs Simplification Act of 1954, Public Law 83–768, 68 Stat. 1136), is regarded by the courts as a source of legislative history of the TSUS. See *Rifkin Textiles Corp. v. United States*, 54 CCPA 138, C.A.D. 925 (1967).

58 Stat. 702.[3] The present statute appears at 42 U.S.C. § 262(a),[4] and as in the 1902 act, one of the biological products covered is "therapeutic serum".

In *Blank* v. *United States*, 400 F. 2d 302 (CA 5, 1968), one of the questions presented under 42 U.S.C. § 262 was "whether as a matter of statutory construction citrated whole blood and packed red blood cells are analogous to a therapeutic serum". Concerning that issue, the Court of Appeals observed (at p. 304):

> The products enumerated in the 1902 statute are immunological agents. "Serum" is "1) the clear portion of any animal liquid separated from its more solid elements; especially the clear liquid which separates in the clotting of blood from the clot and the corpuscles, 2) Blood serum from animals that have been inoculated with bacteria or their toxins." *Serum's principal, if not sole, therapeutic function is as a passive immunological agent; that is, therapeutic serum contains antitoxic or antibacterial antibodies which neutralize or counteract toxins or bacteria. Serum is administered by injection* and is used in the prevention, treatment and cure of such diseases as mumps, pertussis, diphtheria, scarlet fever, pneumonia and meningitis. *Toxins, antitoxins and viruses also are immunological agents.* Toxins (toxoids) and viruses are active in that they generate the production of antibodies; antitoxins are passive, containing preformed antibodies. [Footnote references omitted.] [Emphasis added.]

Inasmuch as neither citrated whole blood nor packed red blood cells are medically employed as immunological agents, the Court of Appeals held that neither product was a "therapeutic serum" or analogous thereto. Thus, as construed by the Court of Appeals in *Blank*, a "therapeutic serum" within the purview of 42 U.S.C. § 262 is a serum containing antitoxic or antibacterial antibodies which neutralize or counteract toxins or bacteria, and is administered by injection, for the

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[3] From the Congressional debates on the 1944 revision, it is apparent that no substantive change (other than the addition of arsphenamines and derivatives) in the 1902 act was intended. See *Blank* v. *United States*, 400 F. 2d 302 (CA 5, 1968).

[4] 42 U.S.C. § 262(a) (1964 ed.) provides, in part:

§ 262. Regulation of biological products.

(a) Intrastate and interstate traffic; suspension or revocation of license as affecting prior sales.

No person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession, any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man, unless (1) such virus, serum, toxin, antitoxin, or other product has been propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Secretary as hereinafter authorized, to propagate or manufacture, and prepare such virus, serum, toxin, antitoxin, or other product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; * * *.

conferring of passive immunity to various infectious diseases. This construction of § 262 in *Blank* is highly significant in the present case inasmuch as Congress intended the scope of item 437.76 to "substantially correspond with the scope of the licensing requirements of the Public Health Service".[5] See also 19 CFR § 12.21 (1968).[6]

Furthermore, in determining whether the imported antisera fall within the purview of item 437.76, it is a relevant consideration that at the time of importation of the antisera no license was issued or required by the Secretary of Health, Education, and Welfare pursuant to 42 U.S.C. § 262, as stipulated by the parties.

4.

Both this court and our appellate court have frequently resorted to the Tariff Commission Summaries of Tariff Information for the purpose of ascertaining Congressional intent. See e.g. *Sandoz Chemical Works, Inc., supra*, at pp. 156–58, where the term "medicinal" was held ambiguous, therefore justifying resort to extrinsic aids.

In the *Summaries of Tariff Information*, Vol. 16 (1950), part 1, p. 116, the following comment appears concerning paragraph 1610 of the Tariff Act of 1930:[7]

> This summary covers: (1) Antitoxins, (2) vaccines, (3) viruses, (4) serums, and (5) bacterins, used for therapeutic purposes. These five kinds of therapeutic products account for most of the biological medicinals produced for human and veterinary use.[1]

Footnote 1 states: "There are certain other biological products, such as toxins, antigens, *diagnostic agents*, and blood fractions, which may or may not be included herein depending on whether or not they are in the form of or are incorporated in vaccines or *serums*. * * *" (Emphasis added.)

However, the following specific definition of a "therapeutic serum" from the regulations of the Federal Security Agency is quoted by the Tariff Commission (p. 116):

> "A therapeutic serum is the product obtained from the blood of an animal by removing the clot or clot components and the blood cells *and intended for administration by a route other than*

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[5] *Tariff Classification Study Explanatory and Background Materials*, November 15, 1960, Schedule 4, part 3, p. 86.

[6] 19 CFR § 12.21 (1968) provides: "The bringing into the United States for sale, barter, or exchange of any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention and cure of diseases of man is prohibited unless such virus, serum, toxin, antitoxin, or product has been propagated and prepared at an establishment holding an unsuspended and unrevoked license for such propagation".

[7] Paragraph 1610, Tariff Act of 1930 read: "Antitoxins, vaccines, viruses, serums, and bacterins, used for therapeutic purposes". Similar provisions appeared in paragraph 1510, Tariff Act of 1922 and paragraph 400, Tariff Act of 1913.

ingestion." Common examples are antipertussis (anti-whooping cough) serum and anti-hog-cholera serum. [Emphasis added.]

Concerning the above-mentioned regulations of the Federal Security Agency,[8] the Tariff Commission pointed out (p. 116):

> Under the provisions of the Public Health Service Act, approved July 1, 1944, the sale, importation, or possession of any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention, treatment, or cure of diseases or injuries of *man* is forbidden unless the product is licensed by the Federal Security Administrator. * * * [Emphasis in original.]

In the *Summary of Tariff Information* (1929), Schedule 15, pp. 2192–94, the following comments appear concerning paragraph 1510 of the Tariff Act of 1922:

> Description and uses.—Antitoxins, vaccine virus, serums, etc., are used in the prevention, diognosis [sic], and treatment of disease in man and animals. The use of an individual vaccine or antitoxin is usually limited to a particular disease. The sale and propagation of these products are controlled by the Public Health Service under the act of July 1, 1902, whereby the importation, exportation, or interstate sale of such products, designed for human use, is forbidden unless the manufacturer be licensed by the Secretary of the Treasury.
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> * * * * * * *
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> Production.—* * * A description of the principal biologicals and of the way in which they are produced and used follow:
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> * * * * * * *
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> 4. Serums.—*There are three general classes of serums: Normal, antibacterial, and antitoxic serums.* The antitoxic serums or antitoxins are the most important. They are all derived almost entirely from the horse, by immunization with cultures of various types of bacteria. Bacteria are used which produce no demonstrable toxin against the specific toxins of such a disease as produce them. (a) Normal serums are used to some extent in hemmorrlogic conditions. (b) Antibacterial serums are employed against anthrax, meningitis, pneumonia, streptococcus infections, etc. (c) Antitoxic serums or antitoxins are of limited number but of dominant therapeutic importance. Use of antitoxins is held by Public Health authorities to be largely responsible for greatly decreased incidence and fatalities from diphtheria, tetanus, and scarlet fever in recent years. Mixed toxin-antitoxin is largely used in diphtheria immunization. An antitoxin against rattlesnake bite has also been developed. [Emphasis added.]
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> * * * * * * *

[8] The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare; and the office of Federal Security Administrator was abolished by §§ 5, 8 of Reorg. Plan No. 1 of 1953. See transfer of functions note to 42 USCS§ 202.

As may be noted above, no diagnostic *serums* were called to the attention of Congress in the 1929 *Summary* under paragraph 1510, and the only serums described are: normal, antibacterial and antitoxic.

True, in the 1950 *Summaries*, the Tariff Commission indicated in a footnote under paragraph 1610 that diagnostic agents were included in that paragraph if they were in the form of or incorporated in serums. More pertinent, however, the definition of "therapeutic serum" quoted by the Tariff Commission in its comment included only those serums "intended for administration by a route other than ingestion", viz., parenterally. The imported in vitro diagnostic sera were, of course, not intended for administration to a patient parenterally or otherwise.

Defendant has called attention to the *Summaries of Trade and Tariff Information*, Schedule 4, Vol. 7 (1971), p. 117,[9] wherein the Tariff Commission stated with reference to item 437.76, TSUS:

> The biological products covered by this summary and included in item 437.76 are: viruses, therapeutic serums, vaccines, toxins, toxoids, antitoxins, and analagous products (such as allergenic extracts); human blood, plasmas, and other fractions of blood; and anatomical parts of the human body prepared for diagnostic or therapeutic purposes. Also covered by this summary is the protein fibrin. *Not included are diagnostic (as contrasted with therapeutic) serums derived from the blood of rabbits, which are provided for under item 799.00 pursuant to Treasury Decision 67–113(2).* [Emphasis added.]
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> The products included here are used in medicine and surgery for such purposes as immunization, diagnosis, and therapeutic treatment of animals and humans. Immunizing agents, imported as well as those produced domestically, are important aids in controlling infectious disease in the United States.

5.

While the above comments of the Tariff Commission are not dispositive in this case, they appear to be consistent with the Congressional intent manifested by the express language of item 437.76. "It is * * * well settled that the master rule to be used in the construction of tariff statutes is to ascertain the legislative intent". *Sandoz Chemical Works, Inc., supra.*

Significantly, in item 437.76 the word "diagnostic" was not used with reference to serums, but in the same item number Congress provided for:

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[9] The *Summaries of Trade and Tariff Information* have been referred to as an aid in determining the scope of tariff provisions. See e.g. *American Bristle & Hair Drawing Co., Keer Maurer & Co.* v. *United States*, 59 CCPA 104, C.A.D. 1048, 458 F. 2d 524 (1972); *Tanross Supply Co., Inc.* v. *United States*, 58 CCPA 26, 31, C.A.D. 1000, 433 F. 2d 1332 (1970). See also *Lyons Export & Import, Inc.* v. *United States*, 59 CCPA 142, 144, C.A.D. 1056, 461 F. 2d 830 (1972).

> * * * Human skin and bone grafts, and other anatomical parts of the human body prepared for *diagnostic or therapeutic* purposes. [Emphasis added.]

The fact that Congress deemed it necessary to employ the term "diagnostic" as well as the term "therapeutic" with reference to anatomical parts indicates that Congress understood the two terms to mean something different. Moreover, when Congress intended to include in item 437.76 articles used for diagnostic purposes, it left no doubt concerning its intent.[10] Under all the circumstances, I conclude that the term "therapeutic serums" as used in item 437.76, TSUS, was not intended to embrace diagnostic serums, such as those involved in this case.

6.

In reaching the foregoing conclusion I have carefully considered the cases of *Air Express International Agency, Inc., a/c Hyland Laboratories* v. *United States*, 52 Cust. Ct. 254, Abs. 68288 (1964), and *Sandoz Chemical Works, Inc.* v. *United States*, *supra*, relied upon by plaintiff.

In *Air Express*, the court held that blood grouping serum used by laboratories, hospitals, blood banks, and others as a reagent for determining the compatibility of blood for transfusions was a serum "used for therapeutic purposes" within the purview of paragraph 1610 of the Tariff Act of 1930.

In *Sandoz Chemical Works, Inc.*, the appellate court held that a drug chiefly used for diagnostic purposes was a "medicinal" under paragraph 28(a) of the Tariff Act of 1930. It should be pointed out that the term "medicinal" is given as a synonym for "therapeutic" in some lexicographic authorities. See e.g. *Webster's Third New International Dictionary*, *supra*.

In my opinion, neither of the above-cited cases is determinative of the interpretation of the term "therapeutic" as used in item 437.76 since the tariff paragraphs construed in those cases were worded very differently from item 437.76, TSUS.[11] Stated differently, in neither *Air Express* nor *Sandoz Chemical Works, Inc.*, were the courts interpreting the term "therapeutic serums" in a tariff provision like item 437.76. It is emphasized that in item 437.76 the terms "therapeutic"

[10] Along the same line, it is instructive to note paragraph 353 of the Tariff Act of 1930, as modified by T.D. 54108, which provided for: "Electrical therapeutic (including diagnostic) apparatus, * * *". See *Westinghouse Electric International Co.* v. *United States*, 28 Cust. Ct. 209, 220–21, C.D. 1411 (1952).

[11] The changes in the language of paragraph 1610, Tariff Act of 1930 were basically as follows: The requirement in paragraph 1610 that *all* of the biologicals named be "used for therapeutic purposes" was eliminated; "therapeutic serums" replaced "serums"; "bacterins" were eliminated; "analogous biological products" and "Human skin and bone grafts, and other anatomical parts of the human body prepared for diagnostic or therapeutic purposes" were entirely new provisions.

and "diagnostic" were used with reference to anatomical parts, while only the term "therapeutic" was used with reference to serums. As indicated above, by employing only the term "therapeutic" with reference to serums Congress clearly manifested an intent that diagnostic serums were not to be included as well.

7.

Additionally, I have considered plaintiff's argument that Congress presumably knew of and thus approved the holding of the Customs Court in the *Air Express* case inasmuch as no amendments to item 437.76 were recommended when H.R. 7969 (which became the Technical Amendments Act of 1965, P.L. 89–241, 79 Stat. 933) was being considered in Congress. However, even assuming *arguendo* that under these circumstances there may be legislative ratification of judicial construction, it must be recognized that item 437.76 was not construed in *Air Express*.[12] There, the term "therapeutic" was construed under paragraph 1610 of the Tariff Act of 1930, which it is again emphasized is worded somewhat differently than item 437.76 of the tariff schedules. Hence, Congress cannot be said to have approved the *Air Express* holding as the intended interpretation of item 437.76.

ANTITOXINS

We now reach plaintiff's second claim, namely, that the antisera fall within the provision for "antitoxins" in item 437.76, TSUS.

As noted in *Blank*, *supra*, 400 F. 2d at p. 304, antitoxins are immunological agents which contain preformed antibodies, and hence confer passive immunity to infectious diseases. In that connection, the following description of "antibodies" and "antigens" in *The Dispensatory of the United States of America* (25th ed. 1955), pp. 1841–42, is illuminating:

> * * * Antibodies are specific protective substances produced by the tissue cells of the host in reaction against an antigen. The term antigen designates any substance—such as infecting animal parasites, bacteria, or other foreign protein—capable of causing the development of specific antibodies in the circulation of animals to which it is administered parenterally. The number of substances which may act as antigens is very large; practically any foreign protein may serve as an antigen. The kinds of specific antibodies produced vary. *Some—as the antitoxins—have the power of neutralizing the soluble toxins of bacteria;* * * *. [Emphasis added.]

[12] In fact, the present case is the first involving the scope of the term "therapeutic serums" as used in item 437.76, TSUS.

In Dorland, *The American Illustrated Medical Dictionary* (21st ed. 1947), antitoxin is described as follows (p. 123):

> antitoxin * * *. A substance found in the blood serum and in other body fluids which is *specifically antagonistic to some particular toxin.* Antitoxins are sometimes found in small amount normally, but they may be greatly increased by injecting the corresponding toxin. The antitoxins for therapeutic use are prepared by injecting a horse with gradually increasing doses of the toxin of a disease; thus the natural immunity of the animal is increased by the formation of antitoxin of the disease. *The antitoxin-laden serum withdrawn from the animal is used by injection to increase the resistance of a person to the disease in question.* [Emphasis added.]

A number of different kinds of specific antitoxins are described in Dorland's dictionary, but two well-known types illustrate typical antitoxins (p. 123–24):

> diphtheria a., the antitoxin which will suppress the harmful effect of diphtheria toxin. It is found normally in small amounts in various animals and in man; in larger amounts in persons who have recovered from an attack of diphtheria; and can be produced in enormous amount and potency for use as a therapeutic agent by injecting animals (usually horses) with diphtheria toxin.
>
> tetanus a., the antitoxin which will suppress the harmful effect of tetanus toxin. It is produced by injecting animals (usually horses) with tetanus toxin. It is used as a prophylactic and also as a therapeutic agent.

Van Nostrand's Scientific Encyclopedia, *supra*, at page 1605, states:

> * * * Effective antisera are also obtained by immunizing animals such as horses and rabbits, bleeding them, and preserving the serum. *Antitoxic* sera are obtained for use against *disease caused by toxin-producing bacteria* such as diphtheria, tetanus, botulism, scarlet fever, etc.* * * [Emphasis added in part.]

Webster's Third New International Dictionary (1966) defines "antitoxin" as follows:

> antitoxin * * *: an antibody formed in the body as a result of the introduction of a toxin and capable of neutralizing the specific toxin that stimulated its production, being produced for medical purposes by injection of animals (as horses) with gradually increased doses of *a toxin or toxoid* (as of diphtheria, tetanus, or botulism), *the resulting serum being used to counteract the same toxin in other individuals* * * * [Emphasis added.]

Encyclopaedia Britannica, Vol. 2 (1969), p. 92, states:

> * * * Antitoxin, like other antibodies, is usually associated with the gamma globulin fraction of serum protein and is produced in response to the antigenic stimulus provided by the inoculation of *toxin or toxoid.* [Emphasis added.]

From the foregoing authorities it appears that an antitoxin is produced in an animal by the injection of an antigenic stimulus *in the form of a toxin or toxoid*, and is *used in vivo to inoculate individuals to neutralize or counteract the specific type of toxin injected into the animal.*

Plainly, then, the imported diagnostic antisera do not fall within the foregoing concept of an "antitoxin". The antigens with which the rabbits were inoculated to produce the antisera were not in the form of a *toxin or toxoid*, and consequently the antibodies produced in the animal's blood were not antitoxic in nature. Moreover, the diagnostic antisera were not used in vivo to neutralize or counteract a *toxin.*

Dr. Ritzmann cautiously hedged by stating that an antitoxin "in a wider sense" includes any antibody response towards any antigen (R. 35). But such broad application of the term is entirely without support; and in fact is contrary to all the lexicographic and other authorities consulted by the court. Indeed, in their brief, counsel for plaintiff were unable to quote or cite a single dictionary definition or other lexicographic authority which supports Dr. Ritzmann's broad concept of an antitoxin! Therefore, his concept of an antitoxin, which is merely advisory, is rejected.

Finally, plaintiff's reliance upon the doctrine in customs jurisprudence that an *eo nomine* designation of an article includes all forms of the article is misplaced since the imported antisera are not a form of antitoxin.

Analogous Biological Products

We now turn to plaintiff's alternative contention that the antisera are "analogous biological products" within the purview of item 437.76, TSUS. Specifically, plaintiff contends that the antisera are analogous to therapeutic serums and antitoxins.

The predicate of the asserted analogy is that the antisera are produced by animals with a specific antigen and are used as an aid to physicians in the "treatment" of disease. I have concluded that the antisera are analogous neither to therapeutic serums nor antitoxins.

The antisera do not perform the function of conferring immunity to disease or resistance to allergens.[13] Additionally, the imported antisera are not intended for parenteral administration as are therapeutic serums and antitoxins.[14] The antisera are medically employed as in

[13] The *Summary of Tariff Information* (1929), Schedule 15, p. 2194 states: "Analogous biological products of recent development include a large variety of pollen extracts, animal epidermal extracts, protein extracts, etc., used in the treatment of hay fever and similar diseases, which are caused by unusual susceptibility to proteins of plant pollens, animals, foods, etc."

[14] "Injection is a meaningful element of analogy but its impact is not great". *Blank* v. *United States*, 400 F. 2d 302, 305 (CA 5, 1968).

vitro diagnostic aids, rather than in vivo, for therapeutic or prophylactic purposes as are therapeutic serums and antitoxins, respectively.

The fact that the antisera were produced from the blood of animals (rabbits) inoculated with certain antigens (which produced antibodies) is insufficient to constitute in vitro diagnostic aids for cancer as analogous to therapeutic serums and antitoxins, which are principally, if not solely, used in vivo as immunological agents for therapeutic or prophylactic purposes. In *Blank* v. *United States*, *supra*, the Court of Appeals pointed out that as neither citrated whole blood nor packed red blood cells were medically employed for immunological purposes, they were not analogous to therapeutic serums.

CONCLUSION

For the reasons stated, the protest is overruled, and judgment will be entered for the defendant.

(C.D. 4510)

UNITED SILVER & CUTLERY CO. *v.* UNITED STATES

Handles

Court No. 67/8290

Port of Los Angeles

[Judgment for plaintiff.]

(Decided April 8, 1974)

Stein and Shostak (*Leonard M. Fertman* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of stainless steel 3 and 9 piece carving sets, was classified in liquidation under item 651.75, TSUS, at the duty rates of 29.891 and 35.577 *per centum ad valorem*, respectively. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under item 651.75, TSUS, at the duty rate of 2 cents plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the in-

volved entry under item 651.75, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to "Stainless Steel 3 pcs. Carving Set" and "Stainless Steel 9 pcs. Carving Set".

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan which were classified in liquidation under item 651.75, TSUS, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and also held that the applicable specific duty should be assessed against each article in the set. In sustaining the Customs Court's determination as against the importer's contention that the specific duty assessment should be made against the set rather than against each article in the set, the Court of Customs and Patent Appeals said:

> * * * This item [651.75] describes a set, with stated exceptions, as including two or more tools, knives, forks, spoons, or other articles provided in the varying rate provisions in schedule 6. part 3, subpart E. While these articles are susceptible to set combinations, they are nevertheless separate and distinct articles with distinct functions in themselves. Their combination in a set or complementary use in nowise militates against or depreciates their separate functions or individual identity. If these articles are imported separately, each would be subject to the applicable specific or compound rate. * * * We agree with appellee that when Congress set a specific rate followed by the word each, in the particular context under consideration, it must have meant each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, since the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Judgment will be entered herein in plaintiff's favor pursuant to rule 11.5(b)(2) of the rules of this court adjudging that the merchandise herein is properly dutiable under item 651.75, TSUS, as sets at the duty rate of 2 cents each, plus 12.5 *per centum ad valorem*.

(C.D. 4511)

UNITED SILVER & CUTLERY CO. *v.* UNITED STATES

Handles

Court Nos. 69/22175 and 69/27173

Port of Los Angeles

[Judgment for plaintiff.]

(Decided April 8, 1974)

Stein & Shostak (*Leonard M. Fertman* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, identified as "54 pc. Stainless Flatware, 'Cordova' ", was classified in liquidation under item 651.75, TSUS, at the duty rate of 23.026 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under item 651.75, TSUS, at the duty rate of 1 cent each plus 12.5 *per centum ad valorem*.

In its complaints plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry under item 651.75, TSUS, in accordance with its claim. In its answers the defendant admits all of the allegations of the complaints, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim.

In the case cited in the complaints the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan which were classified in liquidation under item 651.75, TSUS, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court had sustained the protest lodged against the duty assessment, holding that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and also holding that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, since the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under item 651.75, TSUS, as sets at the duty rate of 1 cent each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4512)

EXHIBIT SALES, INC. *v.* UNITED STATES
(AMICO, INC.)

On Cross-Motions for Summary Judgment

Court Nos. 69/14611 and 69/21988

Port of Philadelphia

[Plaintiff's motion granted.]

(Dated April 9, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (***Robert B. Silverman***, trial attorney), for the defendant.

NEWMAN, Judge: The issue in these two consolidated protests concerns the proper tariff classification of certain toy caricatures, invoiced as "Mister Egg Head", imported from Japan in 1968.

The articles were classified under item 737.90 of the Tariff Schedules of the United States (TSUS) as toys, not specially provided for, not having a spring mechanism, and assessed with duty at the rate of 31 per centum ad valorem. Plaintiff claims that the articles are properly dutiable at the lower rate of 18.5 per centum ad valorem under the provision in item 737.35, TSUS, for toy figures of animate objects.

The pertinent portions of the tariff schedules read:

Schedule 7, part 5, subpart E:

Subpart E headnotes:

* * * * * * *

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

Classified under:

	Toys, and parts of toys, not specially provided for:	
* * *	Toys having a spring mechanism--	* * *
737.90	Other ----------	31% ad val.

Claimed under:

	Toy figures of animate objects (except (dolls): Not having a spring mechanism:	
*	* * * * * * *	
	Not stuffed:	
737.35	Wholly or almost wholly of metal-	18.5% ad val.

The parties agree that there is no genuine issue as to any material fact, and have filed cross-motions for summary judgment pursuant to rule 8.2. Additionally, defendant has admitted to its amended answer that the articles in issue are "toy figures". The question to be decided, in short, has been narrowed by the parties to whether such figures are of "animate objects" within the purview of item 737.35, TSUS.

For the reasons stated hereinafter, plaintiff's motion is granted, and the protests are sustained.

Plaintiff has submitted a sample of the imported toys, which defendant concedes is representative. The sample may be described as follows: The toy figure consists of a small (about five inches tall) caricature of a fireman, somewhat egg-shaped, but flat on the bottom. The metal has been painted to represent human features, clothing and a firehose. On the anterior surface of the figure there are three openings: a tongue permanently protrudes through one opening, which represents the mouth; and two movable eyes are inside the other two openings. The head of the fireman occupies more than half of the caricature, and there is no distinct neck. A hat on top of the head bears the initials "F.D." (fire department), and a metal rod projects vertically out of the hat. The arms extend down the sides of the body, supported by a rod passing horizontally through the body. The figure is without visible legs, and in lieu thereof, three wheels (two front and one rear) protrude through openings in the flat bottom of the figure. When the rod projecting from the top of the hat is manually depressed and then released, a mechanism inside the figure is activated which: (1) causes the two front wheels to revolve (the rear wheel is not activated) and propel the figure forward when on a flat surface, and (2) causes the eyes and protruding tongue to move up and down.

Plaintiff contends that a caricature of a fireman represents a living being, and therefore is a figure of an "animate object" within the purview of item 737.35, TSUS.

Defendant, on the other hand, contends that the imported toy attempts to give human features to an egg-shaped object, rather than attempts to be representative of an animate object.

Further, defendant argues that the imported article differs from humans in the following respects: humans do not have a semielliptical shape, nor do their heads connect directly to their bodies; the head of the human does not comprise one-half to two-thirds of the entire body, and the tongue does not permanently protrude; humans do not have wheels for propulsion, nor the rod extending out of the top of the figure.

I agree with plaintiff's position that the imported toys are caricatures * of an animate object (a fireman), and that such caricatures are properly dutiable under item 737.35, TSUS.

Significantly, item 737.35 does not cover simply figures of animate objects, but *toy* figures of animate objects. Pursuant to headnote 2, schedule 7, part 5, subpart E, "toys" are articles chiefly used for *amusement*. Obviously, the caricatural form of the fireman contributes substantially to its amusement value. In brief, inasmuch as item 737.35 was intended to cover *toy* figures of animate objects, which must be chiefly used for amusement, and since caricatures are not expressly excluded from the statute, I have concluded that caricatures of animate objects, such as those involved in this case, are within item 737.35.

In *Sports Specialties Corp.* v. *United States*, 65 Cust. Ct. 550, C.D. 4137 (1970), the court held, without discussion, that the Government's classification of various caricatures, representing or symbolizing major league baseball players, was correct.

Moreover, I have noted that the Bureau of Customs has ruled that a cartoon-type horse, consisting of twisted flexible wire covered with solid plastic, permitting the article to be twisted into a variety of shapes and poses, is classifiable under the provision for toy figures of animate objects. 100 Treas. Dec. 732, T.D. 56516(193) (1965).

Defendant has cited *Lewis Galoob Co.* v. *United States*, 66 Cust. Ct. 484, C.D. 4239 (1971) and *Louis Marx & Co., Inc.* v. *United States*, 66 Cust. Ct. 139, C.D. 4183 (1971) as pertinent to the issue here.

In *Galoob*, battery-operated "Swivel-O-Matic" astronauts consisting of mechanical robots were held not to be dutiable as toy figures of animate objects within the purview of item 737.35, TSUS, since the term "figures of animate objects" includes only those figures which represent living beings. The presence of a human face in the robots was held immaterial, Judge Maletz stating (66 Cust. Ct. at p. 486):

Webster's Third New International Dictionary (1966) provides the following definition of the word "caricature":

caricature * * * 1a: exaggeration by means of deliberate simplification and often ludicrous distortion of parts or characteristics * * *

> * * * Put otherwise, the addition of "facial" features to what otherwise represents a robot or inanimate being is not sufficient to transform the present article into a figure of an animate object for the reason that the article does not represent any living being. * * *

Galoob is plainly distinguishable from the present case, since unlike a mechanical robot, a fireman is indeed an animate object. The rod extending from the top of the article and the wheels are merely attributes of, and incidental to, the toy nature of the article.

Marx involved the proper tariff status of certain toys invoiced as "Mechanical Hopping Munchie Mellon Series", which were described by Judge Maletz as follows (66 Cust. Ct. at p. 140):

> The imported article is shaped in the form of a stubby bullet atop extremely short legs and highly elongated feet. Each figure (depending on the model) is a small representation of a watermelon, a corn or a banana with the added characteristic of having painted or included thereon cartoon-type facial features, such as eyes, eyebrows, nose and mouth. [Footnote reference omitted.] This is done in such a manner as to make the bullet-shaped portion of the melon, corn or banana resemble both a head and a body. On the right-hand side of each figure is a key which winds a spring mechanism that is contained in the interior. Activation of the spring mechanism causes the toy to hop on its elongated feet in a highly amusing manner.

After reviewing definitions of the terms "animate" and "figure", Judge Maletz concluded that the phrase "figures of animate objects" in the TSUS "must be read to mean forms or representations of humans or animals". Based upon that construction of the statute, it was observed (66 Cust. Ct. at 143):

> From what has been said, the necessary conclusion is that the present importations representing as they do a melon, a corn and a banana with facial features added are not figures of animate objects since *they do not represent any living being*. Moreover, the only witness who testified at trial—plaintiff's assistant import manager who participated in the development of the importations—readily agreed that *were it not for these facial features, the importations would have simply represented a plain watermelon, a banana or a corn*. Just as the addition of "facial" features to a toy truck, for example, will not turn it into a toy figure of an animate object, the addition of facial features to what otherwise admittedly represents a melon, banana or corn is scarcely sufficient to transform the article into a figure of an animate object. For in neither case does the article represent an animate being. * * * [Emphasis added.]

Marx, too, is clearly distinguishable from the instant case. While the toy here was invoiced as "Mister Egg Head", it plainly does not represent an egg transformed into a fireman by paint and the other features.

Thus, the fireman here is not analogous to the watermelon, banana, and corn figures in *Marx*, which represented plant life with human characteristics.

In summary, while I agree with the holdings in *Galoob* and *Marx* that the provision in the tariff schedules for "figures of animate objects" refers to representations of humans or animals, I find those cases distinguishable on their facts from the present case. Moreover the fireman, although in the form of a caricature, represents a human being, and consequently falls within the criterion of an animate object as enunciated in *Galoob* and *Marx*.

It is hereby ORDERED:

1. Plaintiff's motion for summary judgment is granted.
2. Defendant's cross-motion for summary judgment is denied.
3. The district director of customs at the port of Philadelphia is directed to reliquidate the entries covered by the protests in this case respecting the items identified on the invoices as "Mister Egg Head" at the rate of 18.5 per centum ad valorem pursuant to item 737.35, TSUS, as modified by T.D. 68–9.

(C.D. 4513)

SELECTILE CO., INC. *v.* UNITED STATES

Stone products

Polished marble pieces, 1′0″ x 1′0″ x ⅜″, one edge of which has been beveled in such a way that when two pieces are fitted together at the beveled ends, a quirk miter corner is formed, held properly classified under item 514.81, Tariff Schedules of the United States, as marble articles, not specially provided for, rather than under item 514.65, as marble slabs, rubbed or polished in whole or in part.

MARBLE, QUIRK MITERED—SLABS

Under the definition in headnote 2, schedule 5, part 1C, Tariff Schedules of the United States, the term "slabs" is limited to flat stone pieces of certain dimensions, whether or not cut to size, rubbed or polished, "the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction."

Marble pieces which have been beveled for the purpose of creating articles which will fit together to form quirk mitered corners, not for ease of handling or to facilitate installation, are not "slabs" under the definition; they are stone pieces cut to a particular shape for a particular use.

Court No. 68/48202

Port of Los Angeles

[Judgment for defendant.]

(Decided April 12, 1974)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*David A. Ast* and *Bernard J. Babb*, trial attorneys), for the defendant.

RAO, Judge: The merchandise involved in this case consists of quirk mitered polished marble pieces, 1'0" x 1'0" x 3/8". It was assessed with duty at 21 per centum ad valorem under item 514.81, Tariff Schedules of the United States, as marble articles, other than slabs. It is claimed to be dutiable at 7 per centum ad valorem under item 514.65, as slabs, rubbed or polished in whole or in part.

The pertinent provisions of the tariff schedules are as follows:

Schedule 5, part 1:

Subpart C. – Stone and Stone Products

Subpart C headnotes:

* * * * * * *

2. The term "slabs" (items 514.61 and 514.65) embraces flat stone pieces, not over 2 inches in thickness, having a facial area of 4 square inches or more, whether or not cut to size and whether or not one or both surfaces have been rubbed or polished, the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction.

* * * * * * *

Marble, breccia, and onyx, and articles of one or more of these substances:

* * * * * * *

Slabs:

* * * * * * *

514.65	Rubbed or polish in whole or in part	7%	ad	val.
514.81	Other, not specially provided for	21%	ad	val.

The record presented consists of the testimony of two witnesses and three exhibits.

Plaintiff's witness was Robert Clarke, estimator, draftsman, and supervisor for Selectile Co., Inc., which is in the business of installing

tile and marble. He had been with that firm for 6 years and had previously been employed by other firms doing approximately the same thing. His duties include using architectural plans to prepare pricing bids to the subcontractor, closing these transactions, and supervising field work on job sites. He had engaged in some 2000 marble, granite, or tile installations, spending about 25 percent of his time at construction sites. He did not install marble, but had supervised its installation and knew how it was done. His function is basically inspection. He has been familiar with the term "quirk miter" throughout his working experience.

Defendant called William James Miranda, a bricklayer-stone mason and the business agent for the Bricklayers, Stone Masons, Calkers and Block Layers Union in Los Angeles. He had installed marble over a period of 11 years at about 15 large construction sites, and was familiar with the term "quirk miter."

In exhibit 1, "Defendant's Response to Plaintiff's Request for Admissions," defendant admitted that the marble articles involved herein were not classified as marble slabs because the edges were quirk mitered and that had they not been quirk mitered, they would have been classified as marble slabs. It denied that quirk mitering was a process needed to facilitate installation of marble slabs in building construction and claimed that a quirk miter was an architectural decorative feature.

Exhibit 2 consists of two pieces of marble which illustrate what a quirk miter is. They are apparently not samples of the imported merchandise since they are ¾ inch thick. One edge of each piece has been beveled from the unpolished surface to about ¼ inch from the polished surface. From that point to the polished surface, the edge is at right angles to the polished surface and is itself polished. When the beveled edges of the two pieces are fitted together, a corner is produced, but the polished edges form a small recess instead of a sharp corner. According to the witness Miranda, the edges are cut at the mill with a diamond tipped saw.

Exhibit A is a drawing by Mr. Miranda, depicting, in addition to a quirk miter corner, a miter or stone corner, and a butt corner.

From exhibit A and the testimony, it appears that each edge forming a stone miter is cut at an angle from the back to the front surface so that the pieces fit together closely and form a pointed corner.

As to the butt corner, it appears that the edges of the pieces are left square and are butted at the back edge, leaving a recess of the same dimension as the thickness of the marble.

Both witnesses said that marble corners may be formed by a quirk miter, stone miter, or butt corner.

The witnesses described two methods of installing marble: Where the marble piece is in excess of 1 square foot, it is mechanically tied to the structure by drilling a hole into the edge of the stone, putting copper or brass wire into the hole and tying it back to the structure. If it is less than 1 square foot or less than 15 pounds in weight, it can be installed with mastic, a material-like glue which is spread on the back of the marble and on the wall, thus affixing the marble to the wall. First, the corner pieces are set in both directions. The corner does not have to be square, 90 degrees, but could be 45 degrees, depending on the needs of the job. After the corner is set, the stone mason proceeds with the regular laying out of the bond and the marble, keeping the marble plumb and level. Generally, the architect or contractor specifies the method to be used. For the lighter units, some form of the mastic system would be designated.

Mr. Clarke testified that a quirk miter has two purposes, one to facilitate setting the stone, and the other for a nicer appearance. It also hides the thickness of the marble being used. He said that where a piece is quirk mitered, the edges of the stone can be drilled, thus eliminating the necessity for a lace anchor or tunnel to be drilled in the back of the stone. According to the witness, when one piece butts against another, a lace anchor is required. He called that joint a stone miter and said the corner itself must be arrised or swiped. In his opinion, a quirk miter corner is easier to install because there is more leeway in setting it; it can be opened slightly in case the wall is not plumb or square; the joint can be widened on one side. In his experience 70 percent of the installation jobs are quirk mitered. He knew of nothing that is ever done to the edge of marble, other than quirk mitering, which is needed to facilitate installation as tiling or veneering in building construction.

Mr. Miranda testified that a piece of marble with a squared edge and no mitering can be installed but that to make a finished job, the corner would have to be either quirk mitered or stone mitered. The owner would not like a butt corner because it would be clumsy looking and have a harsh appearance. The joints should narrow at the corner to match those that are down the center of the wall.

Mr. Miranda's testimony as to whether it is easier to install a piece of marble that has been quirk mitered was somewhat contradictory: He said first that it was easier to install a quirk mitered piece. Then he said that to the craftsman it did not matter whether the corner was quirk mitered or butt joined insofar as the labor of laying and installing it was concerned; the method of application was identical; the process and the difficulty were the same.

When asked to explain, he stated:

The benefit in using a quirk miter is when the owner of the building and the architect come to look at the job, the mason would be satisfied that he had the best unit to lay on the corner, which would be the quirk miter, and the satisfaction in doing the job the accepted trade way would help the mason in his daily work. * * * The best way to do a marble job on your corners is the stone mitered corner or the quirk mitered corner, and in either case the mason would be satisfied in doing that.

Q. Are you saying, then, that a quirk miter aids in the installation of marble——A. Yes; it does.

Q. [Cont'g] for a corner?——A. Yes; it does.

Later he testified that the actual setting in place was not different, but that there might be a difference in trimming the corners. The mitered corners usually require some handwork, finishing, and calking. He also said there was a difference in the time it took to do the job. The stone mitered corner takes the most time, because some owners like to have the corner look like it is one solid piece and not two pieces. With a quirk miter this does not occur since it is a definite corner; it shows. He said that butt corners are raw corners which leave a recess that is the actual dimension of the unit. Where the pieces are ⅜ inch thick, the recess would measure ⅜ inch from each side. The pieces are put together, leaving a little line for tolerance at the back edge.

The quirk miter requires the same installation only the points are drawn closer together so that as one looks up the wall, the exposed edges all appear identical. The witness said that out of 100 units there are times when only 70 may be used because of the workmanship of the cutting. In other words, when lining up marble with quirk miters, one runs into a problem of tolerance.

The issue in this case is whether the merchandise is classifiable as slabs as defined in headnote 2, schedule 5, part 1C, *supra*. The definition limits "slabs" to flat stone pieces of certain dimensions, whether or not cut to size or rubbed or polished, "the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction."

This provision was recently before the court in *Dushoff Distributing Corp.* v. *United States*, 71 Cust. Ct. 158, C.D. 4489 (1973), where it was held that marble saddles, beveled for safety purposes and not to ease handling or aid in installation as thresholds, were not classifiable as marble slabs.

In the course of the opinion the court quoted the following from the Tariff Classification Study of November 15, 1960 (schedule 5, p. 24):

> A very difficult problem arises under the current provisions in determining whether the slabs or tiles have been processed for use

as lamp bases, table tops, desk sets, etc. In order to make certain the intended scope of this provision, the definition specifies that a slab may or may not be cut to size and that it may or may not have one or both of its surfaces rubbed or polished, but the definition does not permit stone pieces to be included if the edges have been beveled, rounded, or otherwise processed except for such processing as may be needed to facilitate installation as tiling or veneering in building construction. The headnote is not intended to preclude from classification as slabs stone pieces the edges of which have merely been "eased" for handling purposes. The definition will result in the classification of some articles at the higher rate of 21 percent ad valorem in item 514.81. This change, however, is incidental to necessary clarification.

The court then said:

> Under the definition, the term "slabs" is limited to flat stone pieces, not over 2 inches thick, having a facial area of 4 square inches or more, whether or not cut to size and whether or not rubbed or polished, the edges of which have not been beveled, rounded or otherwise processed. An exception to the requirement that the edges not be beveled, rounded or processed is made as to "such processing as may be needed to facilitate installation as tiling or veneering in building construction." The exception must be strictly construed and not extended to merchandise not clearly within its terms. *Goat and Sheepskin Import Co. et al.* v. *United States*, 5 Ct. Cust. Appls. 178, T.D. 34254 (1914); *Joleo Impex Co.* v. *United States*, 45 Cust. Ct. 6, C.D. 2189 (1960); *A. Zerkowitz & Co., Inc.* v. *United States*, 54 Cust. Ct. 151, C.D. 2525 (1965), appeal dismissed 52 CCPA 125 (1965); *The De Haan Company* v. *United States*, 57 Cust. Ct. 39, C.D. 2722 (1966), *aff'd*, 55 CCPA 76, C.A.D. 936 (1968).
>
> * * * * * * *
>
> As I read the definition, it limits the processing beyond cutting to size and polishing to such as facilitates the placing or setting the stone pieces in question in their final location in the wall, floor or ceiling of a building. The Tariff Classification Study points out that the exception was intended to allow stone pieces whose edges had been "eased" for handling purposes to be classified as slabs. There is nothing in the definition or in the legislative history to indicate that Congress intended the exception to be read as broadly as claimed by plaintiff, to cover processed stone pieces used in building construction so long as the processing is necessary to complete a floor arrangement or tiling job or avoid delays caused by having the work done at the site. To so construe it would thwart the purpose of the definition and open the door to more litigation.

Plaintiff argues that there must be some processing which falls within the exception, otherwise the language would be useless and unnecessary, and that the exception must refer to quirk mitering on the theory that there is no other type of processing. In support of this

proposition, plaintiff relies on Mr. Clarke's negative answer to the question:

> Is there anything to your knowledge that is ever done to the edges of marble, other than the quirk mitering, which is needed to facilitate installation as tiling or veneering in building construction?

Mr. Miranda was asked a similar question but his response referred to polishing and cleaning the stone and not to what was necessary to facilitate installation.

The Tariff Classification Study, *supra*, indicates that the purpose of the exception was to allow classification as slabs to pieces which had been "eased" for handling. An example of this might be the removal of the sharp arris by beveling or rounding, as suggested in defendant's reply brief.

Therefore, plaintiff's primary argument fails and it must be determined whether the merchandise consists of flat pieces the edges of which have not been beveled, rounded or processed except to facilitate the placing or setting the pieces in the wall or to ease handling.

The evidence establishes that there are several methods of forming marble corners in buildings; that each one has its own problems of installation; that in general the method of application is the same; that a corner will have a different appearance, depending upon whether it is a butt joint, a stone miter or a quirk miter; and that one reason for using quirk mitered pieces is to give an attractive appearance to the building.

The term "miter" is defined as follows:

Webster's Third New International Dictionary (1968):

> miter n. * * * 2a(1) a surface forming the beveled end or edge of a piece where a miter joint is made
> miter v. * * * 2a: to match together in a miter joint (~the ends of the boards): bevel the ends of for the purpose of matching together at an angle * * *

The Reader's Digest Great Encyclopedic Dictionary (1966):

> miter n. * * * 6 * * * b The beveled edges that come together to form a miter joint.
> miter joint A joint made of two pieces of material whose joined ends have been beveled at equal angles as at the corner of a picture frame.

It is evident that the merchandise in the instant case has been beveled for the purpose of matching the pieces together to form a particular type of corner. According to Mr. Miranda, cutting for this purpose is difficult and many pieces may have to be rejected because they do not form matching units all the way up the wall. The processing was done

to create articles which would fit together to make quirk mitered corners, not for ease of handling or to facilitate installation. Such pieces are not slabs; they are articles cut into a particular shape for a particular use.

Under the Tariff Act of 1930, a distinction was made between marble used as material to make various articles or kept in stock to be employed in a number of kinds of marble installations, and marble which was used in its imported condition as a wholly or partly manufactured article. *Dushoff Distributing Corp.* v. *United States*, *supra; John H. Faunce Phila., Inc.* v. *United States*, 71 Cust. Ct. 176, C.D. 4493 (1973), and cases cited.

The merchandise here is used in its imported condition as quirk miter corners. In view of the legislative purpose as noted in the Tariff Classification Study, *supra*, I conclude that it was not the intent of Congress to broaden the provision for slabs to include stone pieces which have been processed beyond ease of handling or installation into articles used in their imported condition for a special purpose.

I find that the merchandise herein does not fall within the definition of slab in headnote 2, *supra*, and was properly assessed with duty under item 514.81, *supra*, as other marble articles, not specially provided for.

The action is dismissed. Judgment will be rendered accordingly.

(C.D. 4514)

NICHIMEN CO., INC. *v.* UNITED STATES

Net articles

NETTING—GOLF EQUIPMENT

Netting cut to size prior to importation for installation at specific golf driving ranges to keep golf balls from leaving the area of play is not golf equipment. The tariff provisions for sports "equipment" cover articles specially designed for the use of the player in the conduct of the sport. The imported netting is not primarily designed for the use of the player.

Court No. 67/50788

Port of San Francisco

[Judgment for defendant.]

(Decided April 16, 1974)

Glad, Tuttle & White (*John McDougall* and *George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (Joseph I. Liebman, trial attorney), for the defendant.

WATSON, Judge: This case involves merchandise which is both literally and figuratively on the borderline of the claimed provision for "golf equipment." The merchandise consists of netting specially cut to size for use on certain golf driving ranges, either to guard against injury to persons or property in adjacent areas or to contain the flight of the golf ball.

The imported merchandise was classified as net articles not specially provided for pursuant to item 386.05 of the TSUS and assessed with duty at the rate of 50 per centum ad valorem. Plantiff claims classification as other golf equipment provided for in item 734.77 of the TSUS dutiable at the lesser handicap of 15 per centum ad valorem.

The parties have defined the issues in two stages: first, whether the class to which the imported merchandise belongs is chiefly used in connection with the sport of golf, and second, whether such use is as "golf equipment" within the meaning of that statutory term.

Since the evidence clearly establishes that the imported merchandise was cut to size for specific golf installations prior to importation, it seems to me that insofar as use is concerned, it is dedicated for use in connection with particular golf driving ranges and is unsuitable for other uses without complete modification. It therefore is unnecessary to speak of chief use when the actual use is shown to be the only possible use. CF. *International Distributors, Inc.* v. *United States*, 57 Cust. Ct. 369, C.D. 2822 (1966); see also, *J. Gerber & Co., Inc.* v. *United States*, 65 Cust. Ct. 347, C.D. 4101 (1970).

In this case, the cutting and edging of the netting prior to importation with specific golfing locations in mind so that the netting is no longer capable of alternative uses in its condition as imported is an essential distinguishing factor. If the netting involved herein could be used in its condition as imported for other purposes, the ordinary burden of proving its chief use in connection with golf could not be avoided by plaintiff. It would then be plaintiff's burden to show the chief use of the class of article of which the importation is a member. *United States* v. *Colibri Lighters (U.S.A.) Inc.*, 67 CCPA 106, C.A.D. 739 (1960). However, the netting involved herein was removed from the class of netting prior to importation by being specially cut to size for certain golf installations and simultaneously rendered unfit for other uses without modification. In effect, the imported netting has been shown to be a custom-made article whose actual use is ipso facto its chief use. Stated differently, the imported netting forms its own class, whose actual use is then its chief use.

The foregoing reasoning serves only to overcome one objection to plaintiff's claim; namely, that it has failed to prove the chief use of the

class to which the importation belongs. A more serious objection remains even if we grant the use of the imported netting in connection with golf driving ranges. This objection relates to the meaning of the term "golf equipment."

Upon reflection and despite an awareness of the generally broad interpretation given to the term "equipment," I am of the opinion that the imported netting falls outside the scope of the provision for golf equipment. Quite simply, the role of the imported netting has an insufficient connection to the player's practice of the sport. In use it functions not so much as an aid to the player but as a means of protecting persons and property outside the playing area. In this respect it differs dramatically from those articles which, although not indispensable to play, have a direct relation to the conduct of a game and are specially designed as such.

I have in mind the tennis gloves which were the subject of *American Astral Corporation* v. *United States*, 62 Cust. Ct. 563, C.D. 3827, 300 F. Supp. 658 (1969) and which the court decided were tennis equipment. The court stated as follows at page 571:

> * * * For the statutory designation of "equipment" is satisfied once it is shown that the article is specially designed for use in the game or sport. And in this connection * * * the imported articles are not normal gloves, but rather are gloves that have been specially designed for use in the game of tennis as an aid and protective device for the player.

Although the imported nets have been "specially designed" in a certain sense, the design intention relates to the exigencies of the location where the sport is to be played and not to their use by the player either to aid him or protect him. In other words, the nets have not been specially designed for *the use of the player*. As flexible as the term "equipment" has become, I still consider it essential that an article which is not indispensable to play be designed specially and primarily for the use of a player. If the article is not primarily designed for use by the player during the course of play, it is not "equipment" within the meaning of that statutory term. By this standard I distinguish articles which may be specially designed for use in connection with a sport but not primarily for the use of the players. Into this category of articles, such as those designed for the protection of spectators, I would place the imported nets. They are designed for use "at" the sport and not "in" the sport.

In sum, although the imported netting is specially designed for use at certain golf driving ranges, its use in such locations is not primarily to aid the players in the conduct of the sport of golf, and it is, therefore, not golf equipment. This being the case, plaintiff's protest must be overruled and the district director's classification sustained.

I note that plaintiff has failed to pursue the claim in its complaint relating to the existence of a uniform established practice concerning the merchandise at issue. I deem that claim to have been abandoned and accordingly dismiss it.

Judgment will enter accordingly.

(C.D. 4515)

F. W. MYERS & CO., INC. *v.* UNITED STATES

On Defendant's Motion for Judgment on the Pleadings

Court Nos. 70/14983, etc.

Port of Champlain-Rouses Point on Chemicals

[Motion granted.]

(Dated April 18, 1974)

Siegel, Mandell & Davidson (*Brian S. Goldstein* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Wesley K. Caine*, trial attorney), for the defendant.

RAO, Judge: In this motion for judgment on the pleadings, defendant claims that the complaints in the actions herein indicate that plaintiff has failed to meet all the conditions precedent to classification under item 806.20, Tariff Schedules of the United States, and that therefore defendant is entitled to judgment dismissing the actions and overruling all claims by plaintiff.

According to the complaints, the merchandise is refined naphthalene which was exported from the United States to Canada for the purpose of altering its physical form by a process of sublimation. It was thereafter returned to the United States and was assessed with duty under item 403.06, Tariff Schedules of the United States. It is claimed that it should have been classified under item 806.20, as articles exported for repairs or alterations, and duty assessed under item 403.06 on the cost of the alterations only. It is also alleged:

> That all Customs regulations pertaining to the entry of merchandise under Item 806.20, TSUS, have been complied with except the failure to file Customs Form 4455, as required by Customs Regulations § 10.8(d);
>
> That the failure to fill [sic] Form 4455, as set forth in paragraph "FOURTEENTH" was not due to "willful negligence or fraudulent intent" within the meaning of § 10.112 of the Customs Regulations;

Item 806.20 provides:

	Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means:	
806.20	Articles exported for repairs or alterations ----------	A duty upon the value of the repairs or alterations (see headnote 2 of this subpart)

Pertinent also is headnote 1 to schedule 8:

> 1. * * * except as provided in headnote 3 to part 1 of this schedule, any article which is described in any provision in this schedule is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.

General headnote 11 to the tariff schedules provides that the Secretary of the Treasury may issue rules and regulations governing the admission of merchandise and that

> * * * The allowance of an importer's claim for classification under any of the provisions of the schedules which provide for total or partial relief from duty or other import restrictions on the basis of facts which are not determinable from an examination of the article itself in its condition as imported, is dependent upon his complying with any rules or regulations which may be issued pursuant to this headnote.

The quoted sentence relates to mandatory rules and regulations pursuant to which certain articles are accorded preferred treatment only upon compliance with the regulations. Tariff Classification Study Submitting Report, p. 19.

Section 10.8 of the Customs Regulations* provides *inter alia:*

> 10.8 Articles exported for repairs, alterations or processing.
>
> * * * * * * *
>
> (d) Before the exportation of any article to be subject on return to the United States to duty on the value of repairs, alterations, or processing effected abroad as provided for in item 806.20 or item 806.30, Tariff Schedules of the United States, a declaration and application shall be filed in duplicate on customs Form 4455 by the owner or exporter with the collector of customs

*The Customs Regulations referred to herein are those in effect at the time of the exportation and importation of this merchandise. Some changes have been made by T.D. 72-119 (1972).

or appraiser of merchandise at a time before the departure of the exporting conveyance which will permit an examination of the article.

Plaintiff does not dispute that this regulation is mandatory and a condition precedent to recovery but claims that pursuant to Customs Regulation § 10.112, it may file the necessary document at the trial and then produce competent testimony that the delay in filing was not due to wilful negligence.

Said section provides:

> 10.112 Filing free entry documents after entry.—Whenever a document, form, or statement required by regulations in this part to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production but failure to file it was not due to wilful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final.

On a motion by defendant for judgment on the pleadings, the facts well pleaded in the complaints and the inferences reasonably flowing therefrom are deemed admitted, but not their sufficiency as a matter of law. *Rosenhan* v. *United State*, 131 F.2d 932 (1942), *cert. den.* 318 U.S. 790 (1943); *Brown* v. *Bullock*, 194 F. Supp. 207 (1961), *aff'd* 294 F.2d 415 (1961); *Kohen* v. *H. S. Crocker Company*, 260 F.2d 790 (1958); *Harry G. John Jr., et al.* v. *United States*, 138 F. Supp. 89, 95 (1956); *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.* v. *United States*, 68 Cust. Ct. 377, C.R.D. 72–11, 343 F. Supp. 1387 (1972) and cases cited.

The court will assume that the facts alleged can be sustained at the trial and that those are the facts on the basis of which plaintiff seeks recovery. *Stichman* v. *Fischman*, 154 F. Supp. 867, 871 (1957).

The issue is one of law, whether the pleaded facts, viewed in a light most favorable to plaintiff, provide any conceivable basis for permitting plaintiff to recover. *Dyson* v. *General Motors Corporation*, 298 F. Supp. 1064 (1969); *Art Metal Const. Co.* v. *Lehigh Structural Steel Co.*, 116 F.2d 57 (1940); *Friedman* v. *Washburn Co.*, 145 F.2d 715 (1944); *United States* v. *Logan Company*, 130 F. Supp. 550, 552 (1954).

The motion will be denied unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of his claim. *Brown* v. *Bullock*, *supra*; *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.* v. *United States*, *supra*; *National Surety Corp.* v. *First Nat. Bank in Indiana et al.*, 106 F. Supp. 302 (1952).

Thus, for the purpose of this motion, it is assumed that plaintiff can produce the declaration and application required by section 10.8 (d) at the trial and can establish that late filing was not due to fraud or wilful negligence.

The issue is whether section 10.112 of the Customs Regulations is applicable in this case.

This section was first promulgated in 1960 to relieve existing restrictions to the filing of free entry documents and to specify conditions for filing them after entry or after expiration of the bonded period. 95 Treas. Dec. 86, T.D. 55059 (1960).

In a decision handed down the following year, the court pointed out that the regulations which had theretofore been issued as to the free entry of American goods returned required that certain documents be filed in connection with the entry and allowed the collector to waive filing of some but not all of them. *Bertrand Freres, Inc., et al.* v. *United States*, 47 Cust. Ct. 155, C.D. 2296 (1961). The court said (p. 159):

> However, it has been held that the collector may not waive production of customs Form 3311 and that the filing thereof after entry and after the bonded period does not meet the requirements of the regulations. *United States* v. *Saunders et al.*, 6 Ct. Cust. Appls. 86, T.D. 35337; *Wedemann, Godknecht & Lally (Inc.)* v. *United States*, 60 Treas. Dec. 566, T.D. 45175; *J. J. Distributing Co. et al.* v. *United States, supra; Christian Dior, N.Y., Inc.* v. *United States, supra, Bluefries New York, Inc.* v. *United States, supra.* The result has been to prevent the allowance of free entry by the court in cases where the merchandise would otherwise have been entitled thereto. *Christian Dior, N.Y., Inc.* v. *United States, supra; Bluefries New York, Inc.* v. *United States, supra.*
>
> It was obviously to meet this kind of situation that the new regulation was adopted. It does not enlarge the class of merchandise entitled to free entry, since proof that the imported articles in fact fall within the terms of the statute must be presented to the court by evidence or stipulation. What it does do is to make the condition precedent to the vesting of the right of free entry less onerous by extending the time during which the documents may be filed. Since there is nothing in the statute which requires that the condition be met within a certain time, the regulation is neither unreasonable nor clearly outside the authority granted to the Secretary.

See also *Lockwood & Freidin* v. *United States*, 58 Cust. Ct. 210, C.D. 2941 (1967) and *F. W. Myers & Co., Inc.* v. *United States*, 70 Cust. Ct. 202, C.D. 4431, 360 F. Supp. 429 (1973). The section is, however, unavailing where the documents are never filed. *A. E. Coppersmith* v. *United States*, 50 Cust. Ct. 8, C.D. 2381 (1963); *Border Brokerage Company* v. *United States*, 59 Cust. Ct. 289, C.D. 3143 (1967); *George L. Walsh* v. *United States*, 61 Cust. Ct. 252, C.D. 3591 (1968).

In *Hertvy Co., Inc.* v. *United States*, 45 Cust. Ct. 210, Abstract 64361 (1960), it was held that section 10.112 was applicable to shipper's repair statements required by section 10.8(i) of the regulations to be filed in connection with the entry and that by virtue of the new section, they might be filed after liquidation and the filing of the protest, but before the liquidation became final.

In *H. F. Keeler* v. *United States*, 45 CCPA 67, C.A.D. 675 (1958), an American-made airplane was exported to Canada for the purpose of having it repaired. The plaintiff did not file an application on customs Form 4455 prior to the departure of the plane and the plane was not delivered to the collector for examination before exportation. After its return, plaintiff claimed that duty should have been assessed on the cost of the repairs or alterations only. The claim was overruled on the ground that the regulations had not been complied with. Plaintiff had claimed that section 10.42 rather than section 10.8 of the regulations was applicable. The former concerned repairs made to vehicles incidental to their use abroad. The courts rejected plaintiff's contention, and in the course of its opinion, the Customs Court said (38 Cust. Ct. 48, 53, C.D. 1842 (1957)):

> * * * The only purpose of section 10.42(c) is to provide a means of identifying a vehicle upon its return to this country. It has nothing to do with the requirements of section 10.8(b), (c), and (d) as to action to be taken prior to exportation of an article for repairs or alterations. Even if the certificate issued by the Department of Commerce might be accepted in lieu of customs Form 4455 to meet the requirement of section 10.8(g), production of such certificate *at the time of importation and entry* does not obviate the necessity of complying with section 10.8(b), (c), and (d) *at the time of exportation.* These subsections not only require that an affidavit and application be filed before exportation, but that the articles themselves be delivered for examination. These provisions are reasonable, since a prior inspection will aid customs officials in determining subsequently what repairs were made and what their value was. [Emphasis quoted.]

Section 10.112 of the Customs Regulations refers by its terms to documents required to be filed *in connection with the entry*, whereas section 10.8(d) concerns a declaration and application to be filed *before the exportation of the merchandise.* Since the former does not refer to the same period of time as the latter, the two are unrelated and one cannot be construed as changing the time period of the other. The purpose of section 10.8(d) is to give customs officials notice of the proposed exportation and an opportunity to examine the article beforehand. Filing of the application long after the merchandise has been returned will not serve this end.

Plaintiff relies on *E. Dillingham, Inc.* v. *United States*, 67 Cust. Ct. 226, C.D. 4278 (1971), appealed on another point and modified 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972). In that case the Customs Court held that failure to comply with section 10.8 of the Customs Regulations and the absence of a waiver precluded sustaining the claim for classification under item 806.20. In the course of the opinion the court quoted section 10.8(d), *supra*, and stated (p. 229):

> There is a certificate of registration at the bottom of the application which must be signed by a customs official certifying that he has found the articles to be as described by the owner. Customs Regulation § 10.8(j).
>
> A certificate of registration covering the fabric portion of the "needled" felts was never filed, nor was there any evidence as to why it was not filed.
>
> The owner's declaration and the certificate could be filed after entry provided there is an affirmative showing by plaintiff that the *failure to file the document* (Form 4455) *was not due to willful negligence or fraudulent intent.* Customs Regulation § 10.112. [Emphasis quoted.]
>
> There was no evidentiary showing that this document was entitled to the privilege of late filing.
>
> The collector could waive compliance with registration requirements if he was satisfied the failure to comply was due to inadvertence, mistake or inexperience and not to negligence or bad faith. Customs Regulation § 10.8(k).
>
> No evidence was offered which would make this regulation applicable. * * *
>
> Section 10.8(j) provides:
>
> There shall be filed in connection with the entry the certificate of registration (customs Form 4455) and a declaration made by the consignee, owner, or an agent having knowledge of the facts that the articles entered in their repaired, altered, or processed condition are the same articles covered by the certificate of registration. * * *

It is evident that the certificate of registration and the declaration referred to in section 10.8(j) are different from the declaration and application referred to in section 10.8(d), although both may be on the same customs Form 4455. The former is the collector's endorsement showing the examination of the articles and their lading on the exporting conveyance. Section 10.8(g). Thus, where the court in *Dillingham* said that the owner's declaration and certificate might be filed after entry in view of Customs Regulation § 10.112, it was referring to the certificate of registration and declaration under section 10.8(j) and not the application required by section 10.8(d).

Therefore, there is no authority for the proposition that section 10.112 allows the late filing of documents required by section 10.8(d)

to be filed before exportation. It is well settled that compliance with mandatory regulations is a condition precedent to recovery and the burden of proof thereof rests on plaintiff. *Socony Vacuum Oil Co., Inc.* v. *United States*, 44 CCPA 83, C.A.D. 641 (1957) and cases cited.

Plaintiff claims that the Government by its motion is seeking to deny plaintiff's basic right to seek judicial review of administrative action, citing *Suwannee Steamship Company* v. *United States*, 70 Cust. Ct. 327, C.R.D. 73–3, 354 F. Supp. 1361 (1973). This is untenable since plaintiff has admitted failure to comply with section 10.8(d) of the regulations and the court has reviewed the issue of law as to whether section 10.112 is applicable to the instant case.

I conclude that section 10.112, which permits documents required to be filed *in connection with the entry* to be produced later, is not applicable to section 10.8(d), which requires the filing of a declaration and application *before the exportation of an article* which will be claimed classifiable under item 806.20 or item 806.30.

Since plaintiff has failed to comply with regulations which are mandatory and a condition precedent to recovery, its claim for relief cannot be sustained. Defendant's motion for judgment on the pleadings is granted and the actions will be dismissed.

(C.D. 4516)

COST PLUS, INC. *v.* UNITED STATES

Tableware Sets

Court No. 69/33612

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of tableware sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty-rate of 37.36 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 0.9 cent each plus 15.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v.

United States, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the tableware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 0.9 cent each plus 15.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4517)

HEYMAN HOUSEWARES, INC. *v.* UNITED STATES

Tableware sets

Court No. 68/62107

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of tableware sets, was classified in liquidation under items 651.75 and 650.45, TSUS, at the duty rate of 32.5 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.45, TSUS, at the duty rate of 2 cents each plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.45. TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the tableware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.45, TSUS, as sets at the duty rate of 2 cents each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4518)

INDUSTRIAL EXPORT CO. *v.* UNITED STATES

Stainless steel bar sets

Court No. 69/2045

Port of Portland, Oreg.

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of stainless steel bar sets, was classified in liquidation under items 651.75 and 650.21, TSUS, at the duty rate of 25.19 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the stainless steel bar sets.

In its complaint plaintiff alleges, among other things, that the ware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem*

equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4519)

THE MAY DEPARTMENT STORES *v.* UNITED STATES

Flatware sets

Court No. 69/16857

Port of Portland, Oreg.

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of flatware sets, was classified in liquidation under items 651.75 and 650.08, TSUS, at the duty rate of 23.34 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.08, TSUS, at the duty rate of 1 cent each plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.08, TSUS, in accordance with its claim. In its answer the defendant admits

all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the flatware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.08, TSUS, as sets at the duty rate of 1 cent each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4520)

AMTHOR IMPORTS *v.* UNITED STATES

Salad server tongs sets

Court No. 65/16932

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 19, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of salad server tongs sets, was classified in liquidation under items 651.75 and 927.53, TSUS, at the duty rate of 91.36 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.53, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.53, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the salad server tongs sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4521)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 65/12100

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 22, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75, 650.21, and 650.49, TSUS, at the duty rates of 24.7 and 26.4 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21 or 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21 or 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's con-

tention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21 or 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4522)

AVINS INDUSTRIAL PRODUCTS CO. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. 72-3-00709

Port of New York on metal products

[Motion for rehearing denied.]

(Dated April 23, 1974)

Donohue and Shaw (*Charles P. Deem* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

RAO, Judge: In this motion for an order granting a rehearing, setting aside the order of dismissal, restoring the action, and rendering judgment for the plaintiff, it is claimed that the decision in *John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. 19, C.D. 4500 (1974) should be given careful consideration and controlling effect herein.

In the instant case it was held that wire, cut to length and in certain dimensions making it particularly adaptable for use in producing radio antennas, was material and not a part, finished or unfinished, and was classifiable as wire under the definition in headnote 3(i), schedule 6, part 2B, Tariff Schedules of the United States.[1] The court

[1] 3. Forms and Condition of Iron or Steel. * * *

(i) Wire: A finished, drawn, non-tubular product, of any cross-sectional configuration, in coils or cut to length, and not over 0.703 inch in maximum cross-sectional dimension. The term also includes a product of solid rectangular cross section, in coils or cut to length, with a cold-rolled finish, and not over 0.25 inch thick and not over 0.50 inch wide.

considered the difficulty in drawing a line between material and unfinished articles or parts and concluded that Congress had in this instance drawn the line itself and intended that wire, no further processed than cut to length, be classed as wire. *Avins Industrial Products Co.* v. *United States*, 72 Cust. Ct. 43, C.D. 4503 (1974).

In the *Carr* case, the merchandise consisted of rails, measuring 53 feet in length, angular in shape, with two curves called stiffening ribs, and flanges on either end to enable them to fit flush with the curvature of the railroad car. They were dedicated for use and used solely as parts of railroad cars.

The court held they were properly classified by customs officials as parts of railroad cars rather than as angles, shapes and sections. The court quoted from *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4341 (1972), *aff'd* 60 CCPA 137, C.A.D. 1098, 477 F. 2d 479 (1973), wherein it was stated that headnote 1(iv), schedule 6, part 2,[2] excluded from that part identifiable parts solely or chiefly used as a part of an article provided for in the tariff schedules. It then said:

> The considerations deemed controlling in *Servco* are equally applicable here. Thus, in the present case, the rails in question had been advanced in their manufacture to such a point that after importation no further processing was required save for welding intermediate gussets to their inside to stiffen them and for occasionally trimming between a half-inch or inch of excess metal from the edge. In short, in their imported condition, the involved rails were virtually ready for use only as a part of the railroad stock described in item 690.15 requiring as they did merely insubstantial further processing. Put otherwise, the imported rails had been so far processed toward their completed form as a part of a railroad car as to be dedicated to the making of that article alone. * * *
>
> Added to this, plaintiff has conceded that at the time of importation and immediately prior thereto, the imported merchandise was used only for incorporation into railroad cars. * * *

The court pointed out that, on the other hand,

> if in its imported condition, an angle, shape or section has been processed or advanced in manufacture only to a point where substantial additional processing is necessary before it can be used as a part of a given article, the import would not be classifiable as a "part," but rather would be considered a material and thus (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections. * * *

Both cases involved the issue, at what point does a material become an unfinished part?

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[2] 1. * * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

The instant case is distinguishable from the *Carr* case on two grounds: (1) As stated in the original decision (C.D. 4503), it is not clear from the stipulated facts that the imported wire was incapable of being made into more than one article so as to fix its status as a part, and (2) the statutory definition of wire is an indication that Congress intended that wire cut to length but not further advanced be treated as material and not an unfinished part.

The court did not disregard headnote 1(iv), schedule 6, part 2, as plaintiff claims. It noted the difficulty of drawing the line between material and unfinished parts and held that Congress in defining wire in headnote 3(i), schedule 6, part 2B intended that wire cut to length should be classed as wire (a material) and not as an unfinished part.

It may be doubted that wire is ever ordered cut to a particular length without a predetermined purpose in mind.[2] Therefore, under plaintiff's theory, it would be necessary to decide in each instance whether the wire was to be chiefly used as part of a particular article. The result could be a different rate of duty on importations of the same or practically the same merchandise. By including wire cut to length in the definition of wire, Congress intended to prevent such a result and to simplify customs administration.

The motion is denied.

(C.D. 4523)

AMTHOR IMPORTS *v.* UNITED STATES

Flatware sets

Court No. 65/12037

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of flatware sets, was classified in liquidation under items 651.75, 927.53 and

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[2] Cf. the following stipulated fact:

15. That "wire", which is a finished, drawn, non-tubular product, not over 0.703 inch in maximum cross-sectional configuration and which has been cut to length is sometimes so cut because the ultimate customer intends to utilize that length, without further cutting, in a predetermined manner.

927.54, TSUS, at the duty rate of 124.6 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.53 or 927.54, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.53 or 927.54, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the flatware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 671.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53 or 927.54, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorm* is sustained. Judgment will be entered herein accordingly.

(C.D. 4524)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 65/16448

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.21, TSUS, at the duty rate of 24.2 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651. 75 and 650.21, TSUS in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific

or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4525)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 66/2236

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75, 650.49, and 650.21, TSUS, at the duty rates of 22.87, 27.71, and 25.73 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise

the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in acordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4526)

GAF Corporation *v.* United States

Projection lenses

Merchandise failing to conform to sample or specifications may be entitled to drawback upon strict compliance with section 313(c), Tariff Act of 1930, as amended, and the implementing customs regulations.

559-071—75——11

Failure to return merchandise within 90 days or to request an extension of time is failure to effect such compliance.

Approval of a request for drawback does not constitute a waiver of the requisites for an extension of time as prescribed by 19 C.F.R. § 22.33.

Court No. 67/49707

Port of Portland, Oreg.

[Judgment for defendant.]

(Decided April 24, 1974)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Robert B. Silverman* and *Andrew P. Vance*, trial attorneys), for the defendant.

FORD, Judge: This action challenges the propriety of customs in denying a drawback allowance on certain projection lenses. The merchandise in question is covered by two entries which were released to the importer on July 20, 1965 (entry 539) and July 29, 1965 (entry 769). The lenses were found not to conform to specifications and were returned to customs custody on December 22, 1965. The merchandise was laden on the SS Canada Mail under customs supervision on January 7, 1966 according to customs form 7539 forming part of the official papers which were received in evidence without being marked.

Drawback was denied by virtue of plaintiff's failure to return the merchandise to customs within 90 days of its release as required by section 313(c), Tariff Act of 1930, as amended, and by Customs Regulation § 22.33, or being granted permission for an extension of time to make such return as provided for in said regulation, *supra*.

The pertinent provisions of the statutes and regulations provide as follows:

Section 313, Tariff Act of 1930, 46 Stat. 694, as amended, 67 Stat. 515 (1953):

> (c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.
>
> * * * * * * *
>
> (i) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe,

which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) of this Act shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

19 C.F.R. § 22.31:

Drawback allowance.

Upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee, the duties paid thereon, less 1 percent, shall be refunded as drawback in accordance with the provisions of section 313(c), Tariff Act of 1930, as amended, subject to compliance with the regulations in §§ 22.32 to 22.35. [Footnote omitted.]

19 C.F.R. § 22.33:

Return of merchandise to customs custody.

(a) Upon receipt of the drawback entry, the collector shall assign a number thereto, by appropriate notation on all copies, approve the place of deposit of the merchandise specified by the person making the entry or designate another place if that one is not deemed suitable, and return the original to the entrant for presentation with the merchandise to the customs officer at the place of deposit. The merchandise shall be delivered into customs custody at such place within 90 days after the date on which it was originally released from customs custody unless, either before or after the return of the merchandise, a longer time is specifically authorized by the Bureau, or by the collector under the authority of this paragraph. The collector, upon written application, may extend the period in those cases where he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90-day period, and that the importer proposes to return, or has returned, the merchandise within a reasonable time. Applications for extension of time shall be filed with, and acted upon by, the collector of customs at the port where the drawback entry will be filed. If the merchandise is to be exported otherwise than by mail, one copy of the entry shall be returned to the entrant, for resubmission to the collector in accordance with paragraph (e) of this section. A receipt showing the fact and date of such delivery shall be furnished to the applicant if he requests it. If the report of the receiving officer shows that the merchandise was not returned to customs custody within the time required by law, the drawback shall be denied.

The record in this case consists of the testimony of two witnesses called on behalf of plaintiff and one witness called on behalf of defendant. The official papers were received in evidence without being marked and a letter indicating the form of request for extension of time ordinarily used by the broker in drawback cases was received as plaintiff's exhibit 1. The exhibit contained a request for an exten-

sion of time, and the reason for the request. Approval was given by customs officials for the extension of time requested therein. The parties also entered into a stipulation agreeing to the change of name of plaintiff from Sawyer's, Inc. to GAF Corporation due to the sale of the importing corporation to GAF Corporation.

The factual situation involved herein is not in dispute. The merchandise was released from customs custody on July 20, 1965, and July 29, 1965, and was returned to customs with a drawback entry on December 22, 1965. The appraiser's report on the drawback entry establishes the merchandise did not conform to sample or specifications and was laden on the SS Canada Mail on January 7, 1966 under customs supervision.

Whether there was compliance with Customs Regulation § 22.33, which requires return of the merchandise within 90 days from its release, or a request for an extension of time, is the basic issue before the court. There is no dispute that the importer wrote a letter to its broker on October 21, 1965 and that the broker sent a letter to customs on October 27, 1965, as indicated by the following:

SAWYER'S SAWYER'S INC.
Portland, Oregon 97207
Quality Picture Products
Phone: MItchell 4–1181–
Area Code 503
October 21, 1965

George S. Bush & Co., Inc.
211–217 Board of Trade Bldg.
Portland, Oregon

Attention: Mr. Ben Ellis

Dear Ben:

Reference: Customs Entry No. 539 dated July 12, 1965
Customs Entry No. 769 dated July 19, 1965

We would appreciate your obtaining permission from U.S. Customs to return 1,000 Projection Lenses to our supplier, Yoshida Industry Co., Ltd., Japan on a duty drawback basis. The return will be covered under the following two entries: Customs Entry No. 539, dated July 12, 1965 totals 455 projection lenses and under Customs Entry No. 769 dated July 19, 1965 the return will be 545 projection lenses.

As soon as you obtain permission for the return, please let us know so that we can prepare the lenses for shipment.

Cordially,
SAWYER'S INC.
Frank M. McAnulty
Export Traffic Manager

djv

GEO. S. BUSH & CO., INC. CUSTOM HOUSE BROKERS, FORWARDING AGENTS—211–217 BOARD OF TRADE BUILDING, PORTLAND OREGON 97204.

October 27, 1965

Collector of Customs
Portland
Oregon

Madam:

We enclose herewith a copy of a letter received from Sawyer's Inc. requesting permission to export under drawback 1,000 Projection Lenses imported from Yoshida Industry Co., Ltd. As soon as your approval of this request is forthcoming we will arrange for shipment to Japan.

Yours very truly,
GEO. S. BUSH & CO., INC.
B. J. Ellis

BJE/pa
Encl.
APPROVED:
L. Antonelli

Do these letters constitute a request for an extension of time as set forth in Customs Regulation § 22.33? I think not. The regulation specifically provides for return of the merchandise within 90 days of release. This was not done as the merchandise was admittedly returned on December 22, 1965. A longer period of time is permitted "upon written application" where "he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90-day period." The letters of October 21, 1965 and October 27, 1965 do not in my opinion constitute such a request. No mention of extension of time is contained in either letter nor is there any statement which would satisfy the customs official that the delay was beyond the importer's control. The signature of Mr. Antonelli under "APPROVED" was merely an approval of the request for drawback made in the letter. Mr. Antonelli admitted that he was aware at the time he approved the request that additional time would be required but his approval was for drawback not for an extension of time. The witness indicated he had no authority to refuse a request for drawback. Ordinarily, according to Mr. Antonelli, request for drawback is not made but there are instances where the importer will alert customs that drawback will be requested.

The provisions for drawback are not a right but a privilege accorded to an importer requiring strict compliance with the statutory provisions and the regulations. Such compliance is mandatory. *Swan and Finch Company* v. *United States*, 190 U.S. 143 (1903); *Campbell* v.

United States, 107 U.S. 407 (1883); *United States* v. *W. C. Hardesty Co., Inc.*, 36 CCPA 47, C.A.D. 396 (1949); *Swan Tricot Mills Corp.* v. *United States*, 63 Cust. Ct. 530, C.D. 3948 (1969).

Plaintiff contends the approval granted under its letter of October 27, 1965, was a waiver of the form of request for an extension of time.

In *The Josebra Company* v. *United States*, 29 Cust. Ct. 244, C.D. 1476 (1952), *aff'd* 41 CCPA 206, C.A.D. 552 (1954), the court cited with approval the discussion of waiver in Volume 56, American Jurisprudence:

> The essential elements of a waiver, within the definitions already given, are the existence, at the time of the alleged waiver, of a right, advantage, or benefit, the knowledge, actual or constructive, of the existence thereof, and an intention to relinquish such right, advantage, or benefit. [Sec. 12.]

In order to waive, the party doing so must have knowledge of what he is waiving. Mr. Antonelli testified he approved the request to file a drawback entry. Neither the intent of Mr. Antonelli in approving the request nor the contents of the letters would amount to a waiver of the form of a request for the extension of time required in this instance. The customs officials were under no obligation to advise the importer or as in this case a duly licensed customhouse broker that an extension of time would be required under the circumstances.

In view of the foregoing, plaintiff having failed to comply with the statutory provisions and the implementing customs regulations the claim of plaintiff is overruled and the action is dismissed.

Judgment will be entered accordingly.

(C.D. 4527)

AMTHOR IMPORTS *v.* UNITED STATES

Salad service sets

Court No. 66/75845

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 24, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of salad service sets, was classified in liquidation under items 651.75 and 927.53, TSUS, at the duty rate of 92.4 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.53, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.53, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the salad service sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4528)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 67/23596

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 24, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty rate of 27.17 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4529)

SQUAW VALLEY DEVELOPMENT COMPANY *v.* UNITED STATES

Towers

SUPPORT STRUCTURES—UNFINISHED OR UNASSEMBLED ARTICLES—ESSENTIAL PART MISSING

Structural steel shapes imported at Los Angeles, Calif. from West Germany and classified in liquidation under TSUS item 652.98 as structures and parts of structures, other, were claimed by the importer to be properly classifiable under the provision for lifting machinery and parts thereof in TSUS item 664.10 as part of a substantially complete article in unassembled condition in accordance with General Interpretative Rule 10(h).

The record shows that the disputed merchandise formed lattice towers when assembled that were used as the support structures for a "gondola car" type of ski lift system which was constructed at Squaw Valley, Calif., that neither of the two entries before the court covered sufficient parts independent of each other to form complete towers, and that the "gondola cars" were not included in the importations in issue.

Held, the disputed merchandise is not classifiable as claimed since it was not part of a substantially complete ski lift in unassembled condition inasmuch as an essential part, namely, the "gondola cars", were not included in the importations in issue. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109, 486 F.2d 1062 (1973) followed.

Court No. 67/79753(B)

Port of San Francisco

[Judgment for defendant.]

(Decided April 25, 1974)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Michael S. O'Rourke*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case, exported from West Germany in August and September of 1963, is described on the consumption entries as "STRUCTURAL SHAPES OF IRON OR STEEL" [entry 21559] and as "STRUCTURAL SHAPES OTHER THEN [sic] ALLOY IRON OR STEEL" [entry 27838]. The merchandise was classified in liquidation upon entry at the port of San Francisco, Calif. under TSUS item 652.98 as structures and parts of structures of base metal, other, at the duty rate of 19 *per centum ad valorem*. The plaintiff-importer claims that the merchandise is properly classifiable under TSUS item 664.10 as parts of "elevators or other lifting machinery" at the duty rate of 10.5 *per centum ad valorem*.

The competing tariff provisions read:

[classified]		
	Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts, and other structures and parts of structures, all the foregoing of base metal:	
	Of iron or steel:	
	* * * * * * *	
652.98	Other	19% ad val.
[claimed]		
664.10	Elevators, hoists, winches, cranes, jacks, pulley tackle, belt conveyors, and other lifting, handling, loading, or unloading machinery, and conveyors, all the foregoing and parts thereof not provided for in item 664.05	10.5% ad val.

According to the evidence in the case the imported articles in dispute, along with other articles, were utilized in the construction of a ski lift at Squaw Valley, California, which went into operation in December of 1963, featuring, as one witness put it, "an aerial passenger tramway that consisted of 23 support structures, 18,000 feet of endless cable, 79 gondola cars." And the disputed articles, when assembled at the construction site, constituted the support structures for that ski lift system.

At the trial testimony was elicited from two witnesses employed by plaintiff who were present when the ski lift was constructed. One witness, Hans von Nolde, was employed in the field of public relations, publicity, marketing, and advertising; and the other witness, John T. Buchman, was employed as general manager, and was also plaintiff's secretary and treasurer. These witnesses, although possessing no

engineering degrees, were said to be familiar with the erection and operation of ski lifts from their personal experience and association with plaintiff. They testified as to construction details and administrative matters relating to the ski lift. Buchman and von Nolde referred to the disputed articles (when assembled) as "towers". And each was of the opinion that the "tower heads" would be of no use to plaintiff without the additional equipment that was added to them.

Testimony was also elicited from Humphries Miller Walton, a civil engineer in the employ of the American Bridge Division of the United States Steel Corporation. Mr. Walton identified the merchandise in issue as constituting (when assembled) lattice-type towers made of standard roll sections bolted together with a tower head composed of riverted sections with weldment at the top. The witness included the tower head in the concept of "tower", but excluded from this concept the sheave assemblies which are attached to the tower head in the Squaw Valley installation. Mr. Walton testified that the disputed articles (when assembled) conform to the industry definition of a "tower", and are similar to towers made by his employer. He also testified that with slight modification the disputed articles could be used as floodlight or microwave towers. And the witness stated that other uses for lattice towers included electrical transmission towers, substation towers, and towers for personnel conveyance.

Plaintiff argues that the inclusion of tower heads and sheave assemblies in the imported support structures rendered the disputed articles something more than "towers", and, therefore, beyond classification under item 652.98 under the *eo nomine* provision for towers. Plaintiff also contends that the support structures in combination with sheave assemblies, endless cable, and consoles constitute an unassembled and substantially complete ski lift.

With respect to plaintiff's first argument, it is to be noted that the disputed merchandise was not classified under the *eo nomine* provision for "towers" in item 652.98 for the reason, as defendant points out in the brief, that neither of the two entries before the court contained sufficient structural shapes and parts to form complete towers independent of the merchandise covered by the other entry. Consequently, plaintiff's "more than a tower" argument is misplaced inasmuch as the question presented under the instant facts is not whether the disputed merchandise constitutes "towers", but rather whether the merchandise in issue constitutes structures and parts of structures within the ambit of item 652.98. And plaintiff has not addressed itself to this question in its briefs. As such, the court fully agrees with defendant when it says in its brief (p. 18) "plaintiff has not shown how the protested merchandise, not a combination of non-protested and protested mer-

chandise, is anything more than structural steel shapes that when assembled, as in this case, result in a tower."

With respect to plaintiff's second argument, the court is of the opinion that this argument suffers from essentially the same deficiency which characterized palintiff's first argument. In addition to the entry parts deficiency noted herein with regard to the "towers", each of the two entries before the court also lacked sufficient parts to constitute a substantially complete ski lift in unassembled condition.

According to the official papers received in evidence at the trial, entry 21559, entered September 17, 1963, covered 191 packages consisting of electrical parts, wire rope, and structural shapes while entry 27838, entered October 28, 1963, covered 43 packages consisting of electrical and structural parts. However, neither of these entries covered the "gondola" cars which were mentioned in the testimony of witnesses as being part of this lift system at Squaw Valley. Consequently, on this record it would have been improper for the customs officials at the port of entry to have entertained a "substantially complete article" classification for the disputed merchandise in terms of a ski lift in view of the omitted "gondola" cars. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109, 486 F. 2d 1062 (1973).

In C.A.D. 1109 cited by the defendant the merchandise was wooden headboards, footboards, posts, ladders, and guardrails of bunk bed units imported minus siderails which were classified as parts of furniture under TSUS item 727.40, as modified, and claimed by the importer to be properly classifiable under TSUS item 727.35, as modified, as furniture other than chairs, in accordance with General Interpretative Rule 10(h).[1] The customs court found the bunk bed units not to be a substantially complete article in their imported condition, and, accordingly, overruled the protest. In sustaining the lower court our appeals court said:

> Considering as we must, however, the goods in their imported form, we find the missing siderails to be an essential item. We thus find no basis for overturning the lower court's finding that the imported pieces constituted less than a substantially complete bunk bed. We consider the application of the test, whereby the absence of a substantial or essential part precludes classification as the unfinished article itself, to be well founded in the case law so ably discussed by the lower court and aptly followed in the present case.

In the instant case there can be no doubt that the absence of "gondola" cars vitiates any classification claim for substantial com-

[1] Rule 10(h) states: unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

pleteness of a ski lift at Squaw Valley incorporating the merchandise in issue. Indeed, plaintiff's definition of a "ski lift" indicates that "seating" is an essential element of the system. And the cases relied upon by plaintiff which are cited on pages 13 through 15 of its main brief do not compel a different view of the instant facts inasmuch as these cases differ on their facts as to the "essentiality" of the missing parts to the unfinished or unassembled articles.

Plaintiff, as if anticipating rejection by the court of its second argument, urges upon the court as a concluding argument the following:

> It is further submitted that if the Court rule the provision for lifting machinery is inapplicable the merchandise should be reliquidated as parts of lifting machinery since in its imported condition it is dedicated to use as a ski lift and a use provision is more specific than an *eo nomine* provision as parts of towers.

It is unnecessary for the court to entertain this third argument advanced by plaintiff inasmuch as it erroneously presupposes that the disputed merchandise was classified under the *eo nomine* provision for "towers" [2] in item 652.98, when, in point of fact, the disputed merchandise was classified under the provisions of item 652.98 for "structures and parts of structures"—tariff provisions which, like the tariff provision for lifting machinery, are *use* provisions. And plaintiff admits in its brief that the disputed merchandise constitutes "support structures".

For the reasons stated, plaintiff has failed to establish the allegations in its complaint, and, consequently, this action must be and is dismissed.

Judgment will be entered herein accordingly.

(C.D. 4530)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 68/17798

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 25, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

[2] TSUS item 652.98 contains no provision for "parts of towers" as plaintiff's argument suggests.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75, 650.49, and 650.21, TSUS, at the duty rates of 22.36, 24.96 and 27.17 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the material allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4531)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 68/23617

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 44.25 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be

assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4532)

AMTHOR IMPORTS *v.* UNITED STATES

Serving sets

Court No. 68/28799

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of serving sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty rate of 24.35 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plantiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant

admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claims as to the serving sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4533)

AMTHOR IMPORTS, INC. *v.* UNITED STATES

Fondue fork sets

Court No. 68/62440

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of fondue fork sets, was classified in liquidation under item 651.75 and 650.49, TSUS, at the duty rate of 41.79 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the fondue fork sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4534)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert, bar, and salad sets

Court No. 66/207

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 29, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert, bar, and salad sets, was classified in liquidation under items 651.75, 650.21, 650.40, and 650.49, TSUS, at the duty rates of 23.31, 25.81, 18.94, and 27.8 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21, 650.40, or 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21, 650.40 or 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert, bar, and salad sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the

Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classificaton of the subject merchandise under items 651.75 and 650.21, 650.40 or 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4535)

AMTHOR IMPORTS *v.* UNITED STATES

Flatware sets

Court No. 66/2249

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 29, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of flatware sets, was classified in liquidation under items 651.75 and 927.50, TSUS, at the duty rate of 31.5 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.50, TSUS, at the duty rate of 1 cent each plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.50, TSUS, in accordance with its claim. In its answer the defendant admits all of the

allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the flatware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.50, TSUS, as sets at the duty rate of 1 cent each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4536)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 66/75753

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 29, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75, 650.49 and 650.21, TSUS, at the duty rates of 22.34, 24.96, and 27.17 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is simliar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the material allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4537)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 68/6610

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 29, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty rates of 22.34 and 26.92 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, as the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained thep rotest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4538)

OLYMPUS CORP. OF AMERICA *v.* UNITED STATES

Compound optical microscopes

The imported article, in the assembled condition imported, was classified as a compound optical microscope. It consists of a base, an arm, a mounting for interchangeable heads; a quintuple revolving nosepiece for mounting interchangeable eyepieces, a mounting for a stage and substage condenser, coarse and fine adjustment knobs; a flip-switch that moves to a position labeled "lock"; an illuminator built into the base; a lens system for projecting the illumination to the condenser, and a three-position flip-switch for the built-in illuminator. In the condition imported, the assembled article has no ocular head, no eyepieces, no objectives, no condenser, and no specimen stage.

The coarse and fine adjustment knobs and the illuminating system of a microscope are adjuncts and accessories that add to the effectiveness of a microscope within the common meaning of the terms frames and mountings, and parts thereof, for compound optical microscopes. Cases cited and discussed.

Held. In the context of TSUS item 708.73 classifying compound optical microscopes and TSUS item 708.80 classifying frames and mountings, and parts thereof, for compound optical microscopes, the assembled article, in the condition imported, is properly classifiable under the provision for frames and mountings, and parts thereof, for compound optical microscopes, as plaintiff claims, rather than as a compound optical microscope, unfinished, as defendant contends.

Court No. 71-11-01649

Port of New York

[Judgment in part for plaintiff.]

(Decided May 6, 1974)

Rode & Qualey (*Ellsworth F. Qualey* and *William E. Melahn* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

LANDIS, Judge: This action[1] involves the classification of an assembled article imported from Japan and entered at New York on November 13, 1969. Customs officials classified the assembled article as a compound optical microscope (defendant's theory is that it is a microscope, unfinished)[2] under TSUS (Tariff Schedules of the United States) item 708.73, dutiable at the modified rate of 36 per centum ad valorem, pursuant to trade agreement.[3]

Plaintiff alleges that the assembled article is properly classifiable under the tariff provision classifying frames, mountings, and parts thereof, for compound optical microscopes, dutiable at 24 per centum ad valorem under TSUS item 708.80.[4]

The competing tariff provisions, in pertinent context, are provided for in TSUS as follows:

SCHEDULE 7. — SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Part 2. — Optical Goods; Scientific and Professional Instruments; Watches, Clocks, and Timing Devices; Photographic Goods; Motion Pictures; Recordings and Recording Media		
* * * * * * *		
Subpart A. — Optical Elements, Spectacles, Microscopes, and Telescopes; Optical Goods Not Elsewhere Provided For		
* * * * * * *		
	Compound optical microscopes; electron, proton, and similar microscopes and diffraction apparatus; all the foregoing whether or not provided with means for photographing or projecting the image; frames and mountings for the foregoing articles, and parts of such frames and mountings:	
	Compound optical microscopes:	
	Not provided with means for photographing or projecting the image:	
	* * * * * * *	
708.73	Valued over $50 each	36% ad val.
	* * * * * * *	
	Frames and mounting, and parts thereof:	
708.80	For compound optical microscopes	24% ad val.

There are, in TSUS, statutory rules for interpreting the provisions describing the classes of imported merchandise for duty purposes.

[1] The action covers two administrative protests identified as numbers 1001–1–007862 and 1001–1–003759, reviewed and denied by customs officials in proceedings under the Customs Administrative Act of 1970 (84 Stat. 282). Plaintiff, in its complaint, has abandoned the action as to protest 1001–1–007862 covering entries 430093 and 587196.

[2] TSUS General Interpretative Rule 10(h).

[3] Presidential Proclamation 3822, 82 Stat. 1455, 1584.

[4] *Id.*

Relevant to this dispute, defendant relies on TSUS General Interpretative Rule 10(h), which provides as follows:

> (h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished.

All merchandise imported into the United States is classifiable in the condition that it is imported. *United States* v. *P. John Hanrahan, Inc., et al.*, 45 CCPA 120, C.A.D. 684 (1958). The article in this case, in the condition imported, is assembled. The record substantially establishes that the assembled article is complete or finished in the sense that it requires no further processing, manufacturing or labor to advance it for the purpose intended. The assembled article is, however, incomplete or, if you will, unfinished, in the sense that it lacks optical and other vital components necessary for it to function as a compound optical microscope. No one questions that in the assembled condition imported, the article is advanced to the point that it is dedicated to be a compound optical microscope.

The issue in this case is, quite simply, whether the assembled article, in the condition imported, is classifiable under TSUS item 708.80 provision for frames and mountings, and parts thereof, for compound optical microscopes, as plaintiff claims, rather than under TSUS item 708.73 as a compound optical microscope, unfinished. If the assembled article is in reality a frame and mountings for a compound optical microscope, specially provided for under TSUS item 708.80, there is, in my opinion, little merit to the customs classification as a compound optical microscope, unfinished, under TSUS item 708.73.

Defendant, in its argument that the assembled article is not classifiable as plaintiff claims, contends that, in the condition imported, the article assembled is more than a frame and mountings, and parts thereof, for a compound optical microscope. With respect to that contention, it is important to note that defendant *does not* contend that merely because the article imported is assembled, it may not be classified under the descriptively specific provision for frames and mountings, and parts thereof, for compound optical microscopes.[5]

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[5] If an unassembled article cannot be classified as the article it will be when assembled, unfinished, if it is imported without vital components necessary to complete it. *United States* v. *Baldt Anchor, Chain & Forge Division of the Boston Metals Co. et al.*, 59 CCPA 122, C.A.D. 1051, 459 F. 2d 1403 (1972), it follows that an imported assembled article, lacking the vital components that characterize or comprise a compound optical microscope, is not classifiable as a compound optical microscope, unfinished, in competition with a tariff provision classifying the individual entities of which the assembled article is comprised. This conceptual result is supported by the judicial principle that:

> • • • If what is imported as a unit is actually and commercially two or more individual entities which, even though imported joined or assembled together, nevertheless, retain their individual identities and are not subordinated to the identity of the combination, duties will be imposed upon the individual entities in the combina-

(Continued)

The record herein consists of the testimony of three witnesses for plaintiff, one witness for defendant, and various exhibits. Exhibit 1 is representative of the assembled article in the condition imported.

The testimony, visual examination, and other evidence (exhibits A and C) establish that, in the assembled condition imported, exhibit 1 consists of a base, an arm, a mounting for interchangeable monocular, binocular or triocular heads; a quintuple revolving nosepiece for mounting interchangeable objectives (eyepieces); a mounting for a stage and substage condenser; coarse and fine adjustment knobs; a flip-switch that moves to a position labeled "lock"; a "perfect" illuminator enclosed in the base; a lens system with two or four lenses mounted on the base for projecting the illumination to the condenser, and a three-position flip-switch for the illuminator. It is also established that, in the condition imported the assembled article lacks necessary components for it to function as a compound optical microscope, namely, an ocular head, eyepieces, objectives, condenser, and specimen stage (exhibits 2A, B, C, D and E).[6]

Material to its argument that the assembled article is more than a frame and mountings and parts thereof for a compound optical microscope, defendant relies on the testimony, next summarized, pertaining to the assembled article and the fact that the assembled article includes a system for illuminating the object and coarse and fine adjustment knobs.

Plaintiff's witness, Mr. Braginsky,[7] testified that a frame for a microscope is that part which holds the optics and specimen in proper alignment. A mounting, he stated, is a mechanical device attached to the frame, on which you mount the optics or another part of the microscope. The built-in illuminating source on the imported assembled article, in the opinion of Mr. Braginsky, is not a frame or mounting. The lens mounted on the base of the assembled article is part of the built-in illuminating system. Mr. Braginsky testified that an illuminating source is an essential element of a compound optical

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(Continued)

tion as though they had been imported separately. * * * if there are imported in one importation separate entities, which by their nature are obviously intended to be used as a unit, or to be joined together by mere assembly, and in such use or joining the individual identities of the separate entities are subordinated to the identity of the combined entity, duty will be imposed upon the entity they represent. [*Donads Ltd., Inc* v. *United States*, 32 Cust. Ct. 310, 315, C.D. 1619 (1954).]

The classification "unfinished" (General Interpretative Rule 10(h)) applies unless the context of the tariff classification for an article requires otherwise. The context of the provision for compound optical microscopes, and frames, mountings and parts thereof, for compound optical microscopes, in my view, requires that the latter be so classified whether assembled or not assembled.

[6] Exhibit 3 illustratively represents the assembled article with an ocular head, eyepiece, objectives, condenser, and specimen stage.

[7] Mr. Sidney Braginsky, employed by plaintiff as manager of its precision instrument division.

microscope and, as seen in the assembled article (exhibit 1), the built-in illuminator is part of the frame.

Dr. Pollister,[8] witness for plaintiff, testified that the assembled article (exhibit 1) is a frame; that the adjustment knobs and other attachments, including the illuminating system, are part of the frame; that the lens mounted on the base of the assembled article is part of the illuminating system; that an illuminating system is essential to a compound optical microscope, and that the illuminating system has a function unto itself.

Defendant's witness, Mr. Forgosh,[9] testified that, in his opinion, the assembled article consists of more than a frame and mountings and parts thereof, for a compound optical microscope, because of the additional independent functions and moving parts, namely, the illuminator, coarse and fine adjustment knobs, and rack and pinion for the substage.

Whatever else may be said for the above testimony, it is merely advisory since the court is not bound by testimony with respect to the tariff meaning of the term frames and mountings, and parts thereof, for compound optical microscopes. *Tropical Craft Corp* v. *United States*, 45 CCPA 59, C.A.D. 673 (1958); *United States* v. *Mercantil Distribuidora, S.A., et al.*, 43 CCPA 111, C.A.D. 617 (1956). For as defendant acknowledges "[i]n order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the * * * [article] in issue." *E. Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F. 2d 1396 (1971). And as quite often happens, it is on a case by case basis that the court construes and sets the limits of statutory language by a process of inclusion and exclusion and, by this process, bound by no evidence, determines the common meaning as it is the court's function to do. *Marshall Field & Co.* v. *United States*, 45 CCPA 72, C.A.D. 676 (1958).

As stated in the legislative history known as the Tariff Classification Study (schedule 7, page 143), "[t]he * * * provisions for frames and mountings and parts thereof [item 708.80] follow present practices." An existing practice must reflect the case by case process of inclusion and exclusion, by which the court has set the limits of the statutory language frames and mountings and parts thereof, as com-

[8] Arthur W. Pollister, a retired professor of zoology, and consultant to plaintiff, testified that his professional work required extensive use of microscopes and he was familiar with microscopes. Dr. Pollister acknowledged, however, that he was not "familiar with this particular microscope [exhibit 1]."

[9] Harold Forgosh, employed as district sales manager by Bausch and Lomb, Inc., a manufacturer of optical and electronic components and instruments.

monly understood.[10] The following court decisions cited by plaintiff in its brief are relevant precedents as to the common meaning of the terms "frames and mountings, and parts thereof" in connection with optical instruments, including microscopes.

United States v. *American Express Co.*, 7 Ct. Cust. Appls. 169, T.D. 36490 (1916), involved classification of a metal structure, designed to serve as a support for the motive machinery, film reels, lamp house, and projection lenses of a moving-picture machine. Customs classified the metal structure as the frame of an optical instrument dutiable under paragraph 93 of the Tariff Act of 1913 which provided for frames and mountings for optical instruments. Judgment below entered sustaining importer's claim that the metal structure was properly classifiable as the frame of a projection lens under paragraph 94, which provided for frames and mountings for projection lenses. On appeal, the United States, arguing that the metal structure was more than a frame for a projection lens because a projection lens mounted on a frame with the appliances necessary to make it ready for use ceases to be a projection lens and becomes a moving-picture machine which is an optical instrument, apparently also opted to restricting the meaning of the terms "frames" and "mountings" to those parts (i.e. metal tube) into which the lens is fitted.

Replying to the argument, the court of appeals pointed out that Congress, having provided in paragraph 94 for frames and mountings for projection lenses, must have contemplated such a thing as a projection lens mounted and ready for use. Countering a contention which would restrict the meaning of the terms "frames" and "mountings," the court of appeals stated as follows:

> * * * If * * * [a] restricted meaning, however, is given to the terms "frames" and "mountings" when applied to projection lenses, the same restricted meaning must be given to them when applied to the surveying instruments and telescopes provided for in the same paragraph, and that we do not think can be done, inasmuch as surveying instruments and telescopes are certainly something more than mere lenses. (See "Telescope," Standard Dictionary and Encyclopedia Britannica.) If frames and mountings for surveying instruments and telescopes mean the supporting structure and certain adjuncts of those instruments required for their use, then they must mean the supporting structure and certain adjuncts of a projection lens required for its use.
>
> In our opinion, the evidence in this case very clearly establishes that the metal support, the reels, the electric lamp, the mirror, the condenser, and the motive machinery are all instrumentalities

[10] See, TSUS General Headnotes and Rules of Interpretation. General Interpretative Rule 10 statement that for purposes of TSUS, the provisions describing the classes of imported articles are subject to the rules therein, and to such other rules of statutory interpretation as are not inconsistent, established by judicial decision.

> designed to aid and assist the projection lens in producing on a screen an enlargement of the small pictures on the film, and that without such appliances the projection lens would be wholly ineffective for that purpose. Unquestionably the completed article would be a moving-picture machine and possibly it might be regarded as an optical instrument. Nevertheless, it would be at the same time a projection lens supported by the frame and fitted with the adjuncts which make it available for use. From that it follows that even if the frame here involved be considered as the frame for an optical instrument, it is none the less the frame for a projection lens, and as frames for projection lenses are provided for in paragraph 94, that provision must be preferred to the less specific and more comprehensive provision in paragraph 93 covering frames for optical instruments. [*United States* v. *American Express Co.*, 7 Ct. Cust. Appls. 169, at pages 171–172.]

In *United States* v. *International Forwarding Co.*, 9 Ct. Cust. Appls. 156, T.D. 37995 (1919), appeal was taken from decision involving an importation of tubes for a polariscope. Customs had classified the tubes as mountings for an optical instrument (paragraph 93, Tariff Act of 1913). Judgment had entered holding the tubes properly classifiable as manufactures in chief value of metal (paragraph 167, 1913 Tariff Act). As stated in the court of appeals opinion decision, the polariscope tubes were specially designed glass tubes, in varying lengths, for holding liquids to be examined in polariscopes in polarized light. Attached to each end of the tubes were metal ends with screwed brass attachments containing glass disks. Acknowledging that the statement quoted above from *United States* v. *American Express Co.*, *supra*, constituted *obiter dicta*, the court of appeals stated that it was constrained to reverse the decision below and follow the decision in *American Express* because the *obiter* statement accorded with the lexicographic meaning of the term "mountings" which, "*when used in connection with optical instruments such as the microscope and polariscope is used in the sense of accessories, adjuncts, or parts thereof*, which plainly would include the polariscope tubes * * *." [9 Ct. Cust. Appls., at page 159. Emphasis added.] [11]

In *Lietz Co.* v. *United States*, 11 Ct. Cust. Appls. 426, T.D. 39434 (1923), the court of appeals reversed a decision sustaining the customs classification of spirit levels (closed small blown-glass tubes filled with a clear liquid containing a floating bubble of air, used with surveying transits) as articles of every description composed wholly or in chief value of blown glass. The court of appeals held the spirit levels properly classifiable as mountings for surveying instruments within the

[11] See also, *United States* v. *Sheldon & Co.*, 9 Ct. Cust. Appls. 153, T.D. 37994 (1919), reversing decision below and holding mother-of-pearl staves and name rings, imported and suitable for no other use than as mountings or embellishments for opera glasses, properly classifiable as mountings for opera glasses.

common meaning of the term "mountings," because, as stated by the court "[w]e think that the term 'mountings' includes such nonoptical accessories as are mounted upon the instruments, and is not limited to the parts whereby they are supported thereon," *United States* v. *International Forwarding Co.* and *United States* v. *American Express Co.*, *supra.*

The above decisions were reviewed and approved in *Thomas Co.* v. *United States*, 12 Ct. Cust. Appls. 425, T.D. 40591 (1924), wherein the court noted that:

> In each of the cases referred to the merchandise involved consisted of accessories, adjuncts, or parts of the instruments described in the paragraph under consideration, and each article was designed to be attached to the instrument of which it was an accessory, adjunct, or part, and was further designed as such an essential, or at least as such an important element, as, when attached, it would aid the instrument to perform its proper function.
>
> It is evident from a careful reading of paragraph 228, supra, that the word "mountings" as used therein has the same meaning as the word "mountings" as used in paragraph 94 of the tariff act of 1913 in so far as the same may pertain to microscopes. [Page 428.]

Citing definitions of the words "accessory" and "adjunct," the court of appeals held that microscopic slides and cover glasses were not mountings for microscopes as classified by customs under paragraph 228 of the 1922 Tariff Act, because in the tariff sense of "mountings" as accessories or adjuncts:

> The glass slides are not designed to be joined, connected, or attached to a microscope and are therefore not adjuncts of it. Nor are they designed to be connected with a microscope so as to contribute to or aid it in the performance of the essential and proper function of such instrument. The glass slide is not in any sense an addition to the microscope, nor does it accompany it, within the definition of the word "accessory." Certainly it is not a part of the microscope. It is designed to be used in connection with a microscope, but not to aid or contribute to the proper office or function of the instrument as such. It may be classed as a mount or mounting in the sense that a specimen for microscopic analysis is mounted upon it, but it is not, merely on that account, a mounting for a microscope. * * * [12] [Page 429.]

Where the congressional intent as expressed in competing classification provisions so requires, the term "frames and mountings," as

[12] See also, *American Holding Corp. et al.* v. *United States*, 18 CCPA 274, T.D. 44449 (1930), citing and discussing the same decisions in support of classifying essential units or parts of a motion-picture projection mechanism as mountings or frames for projection lenses.

applied to photographic lenses (paragraph 228, Tariff Act of 1922), has been given a restricted meaning, limited to the frames in which, and to the parts on which, such lenses are intended to be mounted or supported, *United States* v. *Bell & Howell Co.*, 19 CCPA 151, 155, T.D. 45263 (1931). In *Bell & Howell*, after again reviewing the cases discussed herein and definitions of the word "mounting," the court of appeals concluded that Congress intended such restricted meaning and stated as follows (pages 155–156):

> It is evident from these definitions that the term "mountings" may mean, depending on the intention of the Congress, that which serves as a mount or a support for an article; or it may include accessories, adjuncts, and equipment by means of which an article is prepared or equipped for use, or set off to an advantage.
>
> In the cases hereinbefore cited this court adopted the enlarged meaning and applied it to the articles and instruments considered in those cases. However, this meaning has never been applied, so far as we are aware, to the provisions for "mountings" for "photographic lenses." Furthermore, we are of opinion that it was not the intention of the Congress to use the word "mountings" in connection with "photographic lenses" in its broad and comprehensive meaning. On the contrary, we think the Congress intended that, as applied to "photographic lenses," the phrase "frames and mountings" should be given a restricted meaning and should be limited to the frames in which, and to the parts on which, such lenses are intended to be mounted or supported. Any other construction would result either in so greatly limiting the operation of the provisions for photographic cameras and parts thereof, in paragraph 1453, as to defeat the evident purpose of the Congress, or in placing such a doubtful and indefinite limitation on the provisions for "frames and mountings" for photographic lenses as to make it difficult, if not impossible, for importers and customs officials, and the courts for that matter, to comprehend the scope of them.
>
> The clear and uncontroverted evidence in this case is that the articles in question are "Kodacolor filter adapters for 1" F/1.8 formula IVA lenses," designed and used as equipment and accessories for, or adjuncts of, photographic lenses, and are, when in use, so connected that they directly contribute to, and aid, photographic lenses in the performance of their proper functions. However, they do not serve as mounts, supports, nor as frames for the lenses, but are merely connected to them. They are not, therefore, within the restricted meaning intended by the Congress to be applied to the phrase "frames and mountings" when used in connection with "photographic lenses."

It is obvious from the cases discussed herein that different factors such as function, uses, applicable tariff provisions and common sense were taken into consideration in determining whether particular parts were frames and mountings in the common meaning of the term as

applied to particular instruments. The situation must be viewed as a whole. *Marshall Field & Co.* v. *United States*, *supra*. The term "frames and mountings," as applied to microscopes, has, on a case by case basis, been broadly and comprehensively construed to include accessories, adjuncts, and equipment by means of which a microscope is prepared or equipped for use.

The assembled article (exhibit 1) bears potent witness of what it is. Defendant, in substance, contends that because the assembled article includes coarse and fine adjustment knobs and a built-in illuminating system, it is more than a frame and mountings for a compound optical microscope. Coarse and fine adjustment knobs attached to the frame of a microscope are "adjusting accessories" within the scope of that authority which "exerted the greatest influence on the arrangement of the * * * [tariff] schedules," namely the Brussels Nomenclature.[13] (Tariff Classification Study, Submitting Report, page 8.)

The illuminating system "built in" and attached to the assembled article performs an independent function that is basically auxiliary to the function of a compound optical microscope, which "*usually* [has] a provision for illuminating the object" [14] (emphasis added). If a compound optical microscope usually, but not always, incorporates a provision for illuminating the object, then the illuminating system is an accessory that adds to the effectiveness of a compound optical microscope. CF., *Herbert G. Schwarz, dba Ski Imports* v. *United States*, 57 CCPA 19, C.A.D. 971, 417 F. 2d 1391 (1969); *T. D. Downing Co. et al.* v. *United States*, 68 Cust. Ct. 71, 75, C.D. 4338 (1972). The coarse and fine adjustment knobs and illuminating system attached to the assembled article in the explicit sense discussed in *Thomas Co.* v. *United States*, *supra*, are adjuncts and accessories, designed, joined, connected, and attached to a frame in a manner as to contribute and aid the performance of the instrument the assembled article as a whole represents, namely, a frame and mountings for a compound optical microscope.

Tariff statutes must be construed in a manner that accords with the legislative intent, *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956), and makes all parts of the statute effective. *United States* v. *Bell & Howell Co.*, *supra*. Congress in providing for compound optical microscopes and frames and mountings for compound optical microscopes must have contemplated such a thing as frames and mountings and parts thereof, for compound optical microscopes. Where terms in a tariff statute have been judicially interpreted and a new statute is reenacted in substantially the

[13] See, Explanatory Notes to the Brussels Nomenclature (1955), Volume III, page 1035, heading 90.12.

[14] Tariff Classification Study, Schedule 7, items 708.71 through 708.73, page 143.

same terms (frames and mountings, and parts thereof, for compound optical microscopes in TSUS are substantially the same terms used in prior tariff acts), the terms will be given the same interpretation, unless a contrary legislative intent is clearly shown. *United States* v. *E. Dillingham, Inc.*, 41 CCPA 221, C.A.D. 555 (1954). Congress, as mentioned earlier, was advised that the provision for frames and mountings followed existing practices. The existing practices presumedly followed the judicial decisions broadly construing the terms to include adjuncts and accessories for microscopes. Defendant has cited nothing that points to a different legislative intent in TSUS.

The rule, relied on by defendant, that a tariff description (in this case compound optical microscopes) covers such article whether finished or unfinished is a rule of classification *unless the context requires otherwise*. The provision for "Frames and mountings, and parts thereof: For compound optical microscopes," upon authority of the judicial decisions holding that the term frames and mountings includes adjuncts, accessories, and equipment by means of which an article is prepared or equipped, in my opinion, requires otherwise. Cf. *United States* v. *Bald Anchor, supra.*[15]

For the reasons herein discussed, this action claiming classification under TSUS item 708.80 is sustained with respect to entry No. K-195494 covered by the summons in the action.

Entry Nos. 430093 and 587196 covered by the summons having been abandoned, the action is dismissed as to those entries.

Judgment will enter accordingly.

(C.D. 4539)

NOVELTY IMPORT CO. *v.* UNITED STATES

Memorandum Opinion and Order

Court No. 71-6-00325

Port of New York

[Defendant's motion to dismiss granted; plaintiff's motion to file out of time denied.]

(Dated May 6, 1974)

Serko & Sklaroff (*Murray Sklaroff* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Andrew P. Vance*, Chief, Customs Section; *Edward S. Rudofsky*, trial attorney), for the defendant.

[15] N. 5.

WATSON, Judge: By an order entered on September 24, 1973 following defendant's motion for a more definite statement, plaintiff was ordered to amend its complaint in this action within thirty days. After that time expired plaintiff moved for leave to file an amended complaint out of time and requested a ten-day extension following entry of the order. Plaintiff's motion was granted and the order entered on November 29, 1973.

On February 27, 1974 defendant moved to dismiss the action for plaintiff's failure to amend the complaint as had been ordered. Pursuant to rule 8.3(b)(3) I am granting defendant's motion to dismiss for failure to comply with an order of the court.

Plaintiff's statement that its failure to file was due to error and inadvertence is, in light of the special flexibility previously shown plaintiff, unacceptable to excuse its failure. Furthermore, plaintiff's mention of the fact that the issue in this action is the same as one in an action presently pending before the Court of Customs and Patent Appeals has no bearing on this motion. Compliance with an order of the court should not be taken lightly in any action. The diligence with which one action may be prosecuted does not justify neglect or casual treatment of an order in another distinct action. I consider dismissal an appropriate measure in these circumstances.

For the reasons expressed above plaintiff's motion to have the amended complaint accepted at this time is without merit and must be denied.

It is therefore,

ORDERED, ADJUDGED and DECREED that plaintiff's motion to file an amended complaint out of time is denied, and it is further

ORDERED, ADJUDGED and DECREED that defendant's motion to dismiss this action is granted and the action is hereby dismissed.

(C.D. 4540)

OXFORD INTERNATIONAL CORP. *v.* UNITED STATES

Glass products

Bicycle mirrors imported from Japan in 1966, consisting of a mirror head and a mounting bracket were classified by the customs officials as mirrors under item 544.51 of the tariff schedules and assessed with duty at the rate of 35 per centum ad valorem. Plaintiff's claim for classification as an entirety and as parts of bicycles under item 732.36 dutiable at the rate of 30 per centum ad valorem sustained.

ENTIRETIES—CRITERIA

The importation at bar fully meets the criteria for classification as an entirety. The mirror head and mounting bracket were imported as one importation, were intended to be used as a unit, and when joined by mere assembly the parts that comprise the mirror head and the mounting bracket were subordinated to the identity of the combined unit which formed a complete article of commerce, namely, a bicycle mirror. See *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966). See also *Border Brokerage Co., Inc.* v. *United States*, 349 F. Supp. 1011, 69 Cust. Ct. 130, C.D. 4383 (1972).

As an entirety, the merchandise in issue did not consist solely of a mirror but also of other parts that comprise the mounting bracket. It was therefore not properly classifiable under the provision for mirrors, and inasmuch as there is no provision specifically covering bicycle mirrors, General Interpretative Rule 10(ij) is inapplicable. That rule states that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

PARTS OF ARTICLE—ACCESSORY OR OPTIONAL

The importation in issue was known, bought and sold as a mirror to be attached to the handlebar of a bicycle; was specifically designed as a unit for use on a bicycle to provide the safety of rearview vision and was used exclusively on a bicycle as a bicycle mirror. As such, it was a bicycle part properly classifiable under item 732.36.

As previously decided by this court, an article may be a part, for customs duty purposes, even though it is merely optional equipment. See *Gallagher & Ascher Company* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964). See also *Vilem B. Haan et al.* v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). Whether it serves as a bicycle accessory or as optional bicycle equipment, the bicycle mirror in issue was properly classifiable as a bicycle part. See *Mattel, Inc.* v. *United States*, 287 F. Supp. 999, 61 Cust. Ct. 75, C.D. 3531 (1968). See also *Victoria Distributors, Inc.* v. *United States*, 425 F. 2d 763, 57 CCPA 80, C.A.D. 980 (1970); *Eric Wedemeyer* v. *United States*, 7 Cust. Ct. 141, C.D. 556 (1941); *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973).

Court No. 67/14275

Port of Philadelphia

[Judgment for plaintiff.]

(Decided May 6, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Patrick D. Gill* and *Andrew P. Vance*, trial attorneys), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of bicycle mirrors imported from Japan in 1966. Each bicycle mirror consists of a glass reflecting surface, known as the "mirror head," and a rod and clamps, that constitute the "mounting bracket."

The defendant, in its brief, describes the imported bicycle mirrors as follows:

> "The importation herein (as represented by Plaintiff's Exhibit 1) consists of an encased glass reflecting surface, 3″ in diameter, an 8″ long rod and two clamps. The rod and clamps (mounting bracket) are attached to the back of the encased reflecting surface (mirror head) by means of a threaded bolt extended perpendicularly from the back of the mirror head through the smaller clamp, which is similarly extended from the side of the rod. This joint is held together by a wing nut. The opposite end of the rod is threaded and extends through the larger clamp. This second clamp is held in place by two hexagonal nuts (one placed above one 'arm' of the clamp, the other below the second 'arm'). It is this larger clamp which is used to affix the imported article to a bicycle handle bar." (Defendant's brief, pp. 10–11.)

It is admitted that the merchandise was imported in its assembled condition in a polyethelene bag labelled "BICYCLE MIRROR."

The customs officials classified the merchandise under item 544.51 of the Tariff Schedules of the United States (TSUS) as mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases, not over one square foot in reflecting area. Duty was consequently assessed at the rate of 35 per centum ad valorem.

The type of glass, and the size of the reflecting area, are not in issue.

Plaintiff contests that classification of the bicycle mirrors, and claims that they are more than the mirrors described in item 544.51, and that, as an entirety, they should properly be classified as parts of bicycles under item 732.36 with duty at 30 per centum ad valorem.

Plaintiff claims alternatively that if the court were to decide that the importation is not to be classified as an entirety, then the mirror and frame, i.e., the "mirror head," and the rod and clamps, i.e., the "mounting bracket," should be held dutiable separately as follows: the "mirror head" or mirror portion of the merchandise be classified under item 544.51 (the provision for mirrors under which the customs officials classified the complete importation); and the "mounting bracket" or the bracket portion, should be classified as articles of steel not specially provided for, under item 657.20 with duty at 19 per centum ad valorem.

The defendant urges that the importation *is* an entirety, and that it has been properly treated as an entirety by the customs officials.

It "vigorously opposes plaintiff's second alternate claim for severance and classification of the mounting bracket portion of the mirror as an other article of metal * * * under item 657.20, TSUS." If it were assumed, however, for purposes of argument only, that the importation is not an entirety, and were to be dutied separately, then the defendant would urge that the "mirror head" be classified as a mirror, and the "mounting bracket" as a bicycle part. Defendant adds that while it concedes that the brackets are articles of iron or steel, under item 657.20, it submits that "it is apparent that they are more specifically provided for by item 732.36, TSUS, as other parts of bicycles * * *."

The pertinent provisions of the tariff schedules may be set forth as follows:

Classified under:

	"Mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments):	
544.51	Not over 1 sq. ft. in reflecting area	35% ad val."

Claimed under:

	"Parts of bicycles:	
	Frames:	
*	* * * * * * *	
732.36	Other parts of bicycles	30% ad val."

Alternatively claimed under:

	"Articles of iron or steel, not coated or plated with precious metal:	
*	* * * * * * *	
	Other articles:	
657.15	Of tin plate	12% ad val.
657.20	Other	19% ad val."

There is no serious dispute as to the facts of the case. Plaintiff's exhibit 1 is a representative sample of the merchandise and is labelled "Bicycle Mirror." Defendant's exhibit "A" is a "Bicycle Accessories Catalog" of the Oxford International Corporation. It is entitled "Oxford Better Bicycle Products," and depicts numerous bicycle articles including the "bicycle mirror" that is the subject of this litigation.

Plaintiff called two witnesses, and the substance of their testimony is easily restated. The importation is a bicycle mirror and is known, bought and sold as a bicycle mirror. It is a "bicycle accessory item." It is specially designed for use as a unit on a bicycle to provide the safety of rearview vision.

Certain testimony, calculated to show independent uses of the mirror head and the mounting bracket, and responses resulting from a misunderstanding of questions asked, may be disregarded. It is futile to quarrel with the conclusion that the "mirror head" is used solely with a "special bracket," and that "[o]ne is no good * * * without the other." Also, both items, as a single unit, are designed to be attached to a bicycle handlebar, and are used exclusively on a bicycle as a bicycle mirror. It may be well to add that approximately 50% of the value to the entirety is represented by the mirror head, and the other 50% by the mounting bracket.

The threshold question presented is whether the importation is an entirety for customs duty purposes. It is the determination of the court that, in fact and in law, the importation is a commercial unit properly dutiable as an entirety. On this aspect of the present litigation the court agrees with the position urged by the defendant in its brief that, the importation, specially designed and imported as a unit, fully meets the criteria for customs classification as an entirety. That the mirror head and the mounting bracket constitute an entirety for customs duty purposes is sufficiently clear and requires but little discussion.

The concept of entireties has been judicially expounded in several cases that are very well known in the field of customs law. None of them leave any doubt that if there is imported into the United States, in one importation, separate parts, which by their nature are obviously intended to be used as a unit, and when joined by mere assembly, the separate parts are subordinated to the identity of the combined unit, and the combined unit forms a complete article of commerce, the combined unit is dutiable as an entirety.

A leading case is *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966). In the *Miniature Fashions* case the Court of Customs and Patent Appeals cited with approval the discussion of the law of entireties found in the case of *Donalds Ltd., Inc.* v. *United States*, 32 Cust. Ct. 310, C.D. 1619 (1954). In the *Donalds* case, this court stated:

> "* * * If there are imported in one importation separate entities, which by their nature are obviously intended to be used as a unit, or to be joined together by mere assembly, and in such use or joining the individual identities of the separate entities are subordinated to the identity of the combined entity, duty will be imposed upon the entity they represent." 32 Cust. Ct. at 315.

The Court of Customs and Patent Appeals, in the *Miniature Fashions* case, also cited approvingly its decision in *Altman & Co.* v. *United States*, 13 Ct. Cust. Appls. 315, T.D. 41232 (1925). In the *Altman*

case, the appellate court expressed the tariff law doctrine of entireties in the following language:

> "* * * if an importer brings into the country, at the same time, certain parts, which are designed to form, when joined or attached together, a complete article of commerce, and when it is further shown that the importer intends to so use them, these parts will be considered for tariff purposes as entireties, even though they may be unattached or inclosed in separate packages, and even though said parts might have a commercial value and be salable separately." 13 Ct. Cust. Appls. at 318.

It cannot be seriously questioned that all of the various parts that comprise the mirror head and the mounting bracket, when assembled, form a commercial unit known and sold as a bicycle mirror. The defendant is justified in relying upon *Davar Products, Inc.* v. *United States*, 287 F. Supp. 994, 61 Cust. Ct. 57, C.D. 3526 (1968), for its contention that the importation at bar is a legal entirety.

The defendant properly distinguishes the case of *Broadway Hale Stores, Inc.* v. *United States*, 62 Cust. Ct. 507, C.D. 3816 (1969), from the case at bar. That case dealt with "a consignment of mirrors and wood mirror frames, separately invoiced and packed." 62 Cust. Ct. at 508. Plaintiff protested the classification of the mirrors and frames as a single commercial entity as mirrors with or without frames under item 544.51 of the tariff schedules. The classification of the mirrors was not before the court, but only the classification of the frames as separate entities under the appropriate item of the tariff schedules. The court noted that the frames were more valuable than the mirrors, and that, as imported, there were two articles, mirrors and frames, separately packed. In sustaining the protest the court stated that it was apparent that the importation therein consisted of "identifiably separate commercial entities." 62 Cust. Ct. at 511.

Quite apart from any guidance that may be derived from any single case, all of the judicial precedents which discuss the legal concept of entireties indicate clearly that the bicycle mirror at bar is a commercial entity dutiable as an entirety. See cases cited in *Border Brokerage Co., Inc.* v. *United States*, 349 F. Supp. 1011, 69 Cust. Ct. 130, C.D. 4383 (1972); *Lafayette Radio Electronics Corp.* v. *United States*, 421 F. 2d 751, 57 CCPA 62, C.A.D. 977 (1970). Hence, it is the determination of the court that the customs officials properly treated the imported bicycle mirror as an entirety.

Having decided that the importation is legally dutiable as an entirety, it is necessary to determine the competing claims pertaining to its proper classification. In essence, the bicycle mirrors have been classified as mirrors, whereas plaintiff maintains that they are properly classifiable as parts of bicycles. The question presented, therefore,

is whether plaintiff has succeeded in proving that the bicycle mirrors have been incorrectly classified, and that legally they should be classified as parts of bicycles.

There can be no question about the presumption of correctness that attaches to the classification of the customs officials, and the dual burden that must be borne by the plaintiff in order to prevail. 28 U.S.C. § 2635(a) (1970). See also *United States* v. *New York Merchandise Co., Inc.*, 435 F. 2d 1315, 58 CCPA 53, 58, C.A.D. 1004 (1970). Nevertheless, it is the determination of the court that the plaintiff has succeeded in establishing its primary claim that the bicycle mirrors were erroneously classified, and that they are properly classifiable, for customs duty purposes, as parts of bicycles.

The defendant not only stresses but concedes that the importation is an entirety, but wishes to have it classified as though it consisted only of a "mirror head." Were the question presented to be the proper classification of the mirror portion of the importation no one would seriously quarrel with its classification as a mirror. But this importation does not consist solely of the mirror. The mirror portion of the importation is only one part of the entirety. The entirety consists of the mirror portion plus the other parts that comprise the mounting portion. The importation consists of all the parts together which, when assembled, constitute a different and separate commercial unit bought and sold as a bicycle mirror.

The customs classification difficulty stems from the fact that there is no provision for "bicycle mirrors," and the question to be determined is whether they are embraced in the tariff provision which covers mirrors. Consequently, it is futile to *assume* that bicycle mirrors are covered under the contested tariff provision. Whether the importation, consisting of bicycle mirrors, was intended by Congress to be included in the contested provision for mirrors is the very question to be determined by the court.

At the trial, on motion by defendant, there was incorporated into the record of this case the record in the case of *Irving W. Rice & Co., Inc.* v. *United States*, 65 Cust. Ct. 125, C.D. 4064 (1970). In view of the reliance that defendant places upon the *Rice* case some extended treatment of that case seems warranted.

The importation in the *Rice* case consisted of a two-sided shaving mirror with an expansion arm. The mirror, which contained a reflecting surface and a magnifying surface, because of its "expansion arm" was also described as an "extension mirror." Although the most valuable component material of the importation was base metal, the mirror was of glass.

It was agreed by both sides in the *Rice* case, that "the issue to be decided is whether TSUS item 544.51 covers all mirrors made of any of

the glass described in items 541.11 through 544.41, with or without frames or cases, regardless of their component material in chief value." 65 Cust. Ct. at 127.

The articles in the *Rice* case were concededly to be classified as *mirrors*, and the only question presented was which one of two competing mirror classifications should have been applied. In that case the extension mirrors had been classified under item 544.51 of the tariff schedules at 33 per centum ad valorem, whereas plaintiff maintained that they were properly dutiable at only 17 per centum ad valorem under item 652.70 of the schedules. Item 544.51, under which the extension mirrors were classified, deals with "mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments)." Item 652.70, under which plaintiff claimed classification, covers "photograph, picture, and similar frames; mirrors; all the foregoing of base metal, whether or not coated or plated with precious metal."

In the *Rice* case, in the language of the court, "[t]he crux of this dispute is that both of those dutiable items cover mirrors in different context * * *."

In sustaining the customs classification and overruling plaintiff's protest the court stated:

> "The specific reference in TSUS item 544.51, to mirrors made of any of the described glass, refutes plaintiff's projected idea that we would construe TSUS item 544.51 to include all glass mirrors. We could not give it such construction. But mirrors, with or without frames, made of any of the described glass, are classified in TSUS item 544.51 regardless of the component material of chief value, excepting only framed or cased mirrors of precious metal, and mirrors designed for use in instruments. The lawmakers particular exception of framed or cased mirrors of precious metal (i.e., wholly or in chief value of precious metal) from the reach of TSUS item 544.51, in our opinion, clearly signals an intention that TSUS item 544.51 not be judicially diluted beyond the plain terms of the particular exception." 65 Cust. Ct. at 131.

Without deciding what mirrors were covered by item 652.70 of the tariff schedules, the court in the *Rice* case concluded as follows:

> "It suffices that, in classifying mirrors made of described kinds of glass, TSUS item 544.51 is relatively more specific than is TSUS item 652.70 which classifies a much broader class of mirrors, without regard to the kind of reflecting glass or other reflecting material, of base metal. The provisions are, in their relevant parts, mutually exclusive and the mirrors embraced within TSUS item 544.51 are not covered by TSUS item 652.70." *Ibid.*

Surely, in view of the competing tariff items and the issue presented, the *Rice* case is clearly distinguishable. The importation in that case

was concededly a mirror and the only question presented was to determine which mirror provision covered the imported mirror. Unlike the *Rice* case no claim is made in the case at bar that the bicycle mirror is classifiable under item 652.70 which covers mirrors of base metal. Simply stated, the *Rice* case solely raised the question whether the two-sided glass shaving mirror, mounted on an extension, and in chief value of metal, should or should not have been classified as a mirror of glass. Furthermore, the crucial questions whether the importation was something other or more than a "mirror," and therefore not covered by the mirror provisions, and whether it was in fact and in law, a part of something else, were neither raised nor treated in the *Rice* case. Hence, the *Rice* case sheds but little light on the present litigation for these are the questions presented here.

Before noting the judicial authority that pertains to the classification of the bicycle mirrors as parts of bicycles it seems appropriate to comment upon the specific language of item 544.51 of the tariff schedules. That item covers glass mirrors "with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments)." The language is quite clear and specific that, "except framed or cased mirrors of precious metal, and mirrors designed for use in instruments," the item covers mirrors "with or without frames or cases." One of the parts of the importation at bar is indeed a mirror, and that mirror is also framed. This framed mirror, however, is not the importation before the court. As indicated previously, the importation consists of a mirror and its frame, together with the other parts that are collectively called a mounting portion. The tariff item speaks only of "frames or cases," and in its pleadings the defendant "admits that the mounting portion of the merchandise is neither a frame nor a case for a mirror." Hence, the importation is not covered by item 544.51, nor is there any other tariff provision that specifically covers bicycle mirrors. There can therefore be no application of General Interpretative Rule 10(ij) of the tariff schedules. Rule 10(ij) states that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

The classification question before the court pertains to the entirety which includes all of the parts that constitute the importation. When assembled, the totality is immediately recognized and sold as a commercial unit known as a bicycle mirror.

It is the determination of the court that the bicycle mirror is a part of a bicycle, and is therefore properly dutiable under item 732.36 of the tariff schedules.

What constitutes a "part" or "parts," for customs duty purposes, has been treated with thoroughness in several decisions of this court

and the Court of Customs and Patent Appeals. The leading cases that authoritatively set forth the applicable principles of law are *Gallagher & Ascher Company* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964), and *Trans Atlantic Company* v. *United States*, 48 CCPA 30, C.A.D. 758 (1960). These and other cases are discussed in *Vilem B. Haan et al.* v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). The *Gallagher & Ascher* case is particularly helpful since it also indicates that an article may be a "part," for customs duty purposes, even though it is merely "optional equipment." Hence, whether the bicycle mirror is a bicycle "accessory" or "optional equipment" would in no way prevent it from being classified as a bicycle part. *Mattel, Inc.* v. *United States*, 287 F. Supp. 999, 61 Cust. Ct. 75, C.D. 3531 (1968). In the words of Judge Lane, who wrote the opinion of the Court of Customs and Patent Appeals in *Victoria Distributors, Inc.* v. *United States*, 425 F. 2d 759, 761, 57 CCPA 76, 79, C.A.D. 979 (1970), "* * * to find that something would be dutiable as a 'part' does not in the least preclude its being an accessory in trade parlance." The *Victoria Distributors* case dealt with battery-operated horn-light combinations. There was no doubt that the bicycle trade considered them to be bicycle "accessories." There was also no doubt that "as a matter of commercial reality" they were dedicated to use on bicycles. In sustaining the classification as parts of bicycles, Judge Lane made the additional finding that "the horn-lights contribute to the safe and efficient operation of bicycles." 425 F. 2d at 762. Surely, the same may be said of the bicycle mirrors at bar.

Many cases may be cited that support the classification of the bicycle mirrors as parts of bicycles. A few may suffice. In *Victoria Distributors, Inc.* v. *United States*, 425 F. 2d 763, 57 CCPA 80, C.A.D. 980 (1970), the court found the holding in the prior case of the same name to be controlling, and held generator lighting sets, also optional equipment or accessories dedicated to use on bicycles, to be parts of bicycles.

In *Eric Wedemeyer* v. *United States*, 7 Cust Ct. 141, C.D. 556 (1941), this court reversed the classification of the customs officials and held that "complete bicycle lamps" were properly dutiable as parts of bicycles. In the *Wedemeyer* case the court relied on *United States* v. *Bosch Magneto Co.*, 13 Ct. Cust. Appls. 569, T.D. 41434 (1926), which held that lamps and horns were parts of automobiles. Commenting upon the safety aspect of the articles, the court, in the *Wedemeyer* case, observed that the reasoning of the *Bosch Magneto* case, as to the safety feature of the automobile lamps and horns, also applied to bicycles. Referring to state statutes, that required bicycles operated at night to be equipped with lamps, the court stated:

"The existence of these statutes would clearly indicate that the safe, proper, and efficient operation of bicycles at night requires the illumination furnished by bicycle lamps such as those involved herein." 7 Cust. Ct. at 143.

The *Wedemeyer* case was relied upon and followed in the case of *Spiegel Bros. Corp.* v. *United States*, 9 Cust. Ct. 194, C.D. 692 (1942), where bicycle horns were held to be parts of bicycles. More recently, in the case of *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973), this court sustained the classification of bicycle horn-lights as parts of bicycles. As in prior cases reference was made to the fact that the horn-lights "contribute to the safe and efficient operation of bicycles."

In *F. A. Baker Co.* v. *United States*, 17 Cust. Ct. 41, C.D. 1017 (1946), this court sustained the classification of bicycle inner tubes as parts of bicycles.

In *Merry Bean Co.* v. *United States*, 2 Cust. Ct. 123, C.D. 104 (1939), this court sustained the claim that leather straps fitted with metal buckles that served as substitute brakes for racing bicycles were parts of bicycles.

In *Davies, Turner & Co.* v. *United States*, 40 CCPA 193, C.A.D. 517 (1953), steel bicycle chains were held to be dutiable as parts of bicycles rather than "chains of iron or steel used for the transmission of power * * *."

Much that was stated in the cited cases would apply to the case at bar.

In conclusion, it is the determination of the court that the imported bicycle mirrors, for customs purposes, are entireties that are properly classifiable as parts of bicycles under item 732.36 of the tariff schedules with duty at 30 per centum ad valorem. In view of the foregoing, the alternative claims of the plaintiff need not be considered further.

Since the court has determined that plaintiff has successfully borne its burden of proof, its claim for the classification of the imported merchandise under item 732.36 of the tariff schedules is hereby sustained.

Judgment will issue accordingly.

(C.D. 4541)

JACK BRYAN, INC. *v.* UNITED STATES

Wearing apparel

Merchandise consisting of unfinished collars, cuffs, belts, and parts of blouses or dresses, made of nets of wool or man-made fiber,

ornamented with beads, bugles, spangles or imitation gemstones or combinations thereof, held properly classifiable as women's wearing apparel, ornamented, under item 382.02 or item 382.04, Tariff Schedules of the United States, depending on whether it was in chief value of wool or man-made fibers.

WEARING APPAREL—UNFINISHED—CONSTRUCTION—LEGISLATIVE HISTORY

In view of General Interpretative Rule 10(h), the long-continued interpretation of the term "wearing apparel", and the legislative history, unfinished parts of garments, which have to be backed or lined and joined with other parts of a garment and sewn together, dedicated to use as particular articles of wearing apparel or to be attached to the particular garments for which they were designed, are wearing apparel, unfinished and unassembled, and are classifiable as wearing apparel under the tariff schedules. While a lining or backing has to be supplied to complete some of the articles, they are incidental parts and are not so essential as to prevent classification as wearing apparel.

ARTICLES ORNAMENTED WITH BEADS

Articles ornamented with beads, bugles, spangles or imitation gemstones or combinations thereof are not excluded from classification as wearing apparel of textile materials under schedule 3 of the tariff schedules by reason of the definition of "ornamented" in headnote 3, on the ground that the fabric is not visible in significant part, where the fabric is clearly visible, matches in color and material the garment for which it is intended, or forms a significant part of the beaded design.

Court No. 73-3-00687

Port of Los Angeles

[Judgment for defendant.]

(Decided May 14, 1974)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

RAO, Judge: The merchandise involved in this case was imported from Hong Kong and consists of items, such as collars, cuffs, belts, and parts for blouses or dresses, made up of nets of wool or man-made fiber on which have been sewn beads, bugles, spangles, or imitation gemstones or combinations thereof. It was classified as women's wearing apparel, ornamented, and was assessed with duty under item 382.02 or item 382.04, Tariff Schedules of the United States, depending upon whether it was in chief value of wool or man-made fibers. (Style No. 8078 in entry No. 120179 was classified under item 807.00 and assessed with duty at the rate applicable under item 382.04 upon

the value of the merchandise less the cost or value of the products of the United States which had been exported for assembly.) It is claimed in the amended complaint that the merchandise is not wearing apparel, but parts thereof; that some items are in chief value of beads, bugles, spangles, imitation gemstones or combinations thereof and are dutiable under item 741.50, as modified, as articles not specially provided for, of beads, of bugles, of spangles, of imitation gemstones, or of any combination thereof; and that the other items are in chief value of fabric and are dutiable under item 386.08, as modified, as textile articles, not specially provided for.

The pertinent provisions of the tariff schedules are:

General Headnotes and Rules of Interpretation:

* * * * * * *

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

Schedule 3. – Textile Fibers and Textile Products

Schedule 3 headnotes:

* * * * * * *

2. For the purposes of the tariff schedules—

(a) the term "textile materials" means—

* * * * * * *

(iv) the fabrics provided for in part 3 and part 4 of this schedule,

* * * * * * *

(vi) * * * articles produced from any of the foregoing products;

* * * * * * *

3. For the purposes of the tariff schedules—

(a) the term "ornamented", as used with reference to textile fabrics and other articles of textile materials, means fabrics and other articles of textile materials which are ornamented with—

* * * * * * *

(iv) applique and replique work, beads, bugles, spangles, bullions, or ornaments; or

(v) any combination of the foregoing types or methods of ornamentation;

(b) ornamentation of the types or methods covered hereby consists of ornamenting work done to a pre-existing textile fabric, whether the ornamentation was applied to such fabric—

(i) when it was in the piece,

(ii) after it had been made or cut to a size for particular furnishings, wearing apparel, or any other article, or

(iii) after it had actually been incorporated into another article,

and if such textile fabric remains visible, at least in significant part, after ornamentation: * * *

(c) applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other article of textile materials shall be disregarded in determining the component material of chief value of such fabric or other article.

* * * * * * *

Part 6. – Wearing Apparel and Accessories

Subpart F. – Other Wearing Apparel

Subpart F headnote:

1. This subpart covers only wearing apparel, not specially provided for, of textile materials.

* * * * * * *

	Women's, girls', or infants' lace or net wearing apparel, whether or not ornamented, and other women's, girls', or infants' wearing apparel, ornamented:	
	* * * * * * *	
382.02	Of wool	42.5% ad val.
382.04	Of man-made fibers	42.5% ad val.

* * * * * * *

Part 7. – Miscellaneous Textile Products; * * *

Subpart B. – Textile Articles Not Specially Provided For

Subpart B headnote:

1. This subpart covers articles, of textile materials, not covered elsewhere in the tariff schedules.

	Articles not specially provided for, of textile materials:	
	Lace or net articles, whether or not ornamented, and other articles ornamented:	
	* * * * * * *	
386.08	Other ----------	35% ad val. [for merchandise entered during 1970, T.D. 68–9]
		30% ad val. [for merchandise entered during 1971, T.D. 68–9]
	* * * * * * *	

Schedule 7. – Specified Products; Miscellaneous and Nonenumerated Products

	* * * * * * *	

Part 6. – Jewelry and Related Articles; Cameos; Natural, Cultured, and Imitation Pearls; Imitation Gemstones; Beads and Articles of Beads

	* * * * * * *	
741.50	Articles not specially provided for, of beads, of bugles, of spangles, of imitation gemstones, or of any combination thereof ----------	17.5% ad val. [for merchandise entered during 1970. T.D. 68–9]
		15% ad val. [for merchandise entered during 1971, T.D. 68–9]

Samples of the merchandise were received in evidence and testimony was adduced from Jack Andrew Bryan, president of Jack Bryan, Inc., manufacturer of women's wearing apparel, principally cocktail and after-five dresses, and importer of beaded parts to be sewn in this country.

The entries, styles and claimed classifications set out in the amended complaint, and the exhibits representing the merchandise are as follows:

Entry No.	Style No.	Exhibit No.	Claimed classification
120179	8062	4	741.50
	8071	6	741.50
	8078	7	386.08
124838	9068	1	741.50
	4014/8081L	2	386.08
800874	8051	3	386.08
	21504	none	386.08
	8062	4	741.50
	2002/1166	5	741.50

Claims as to styles not mentioned in the amended complaint are deemed abandoned.

Collective exhibit 1, representing style No. 9068, consists of a collar and two cuffs of pink fabric, ornamented with bugles, beads and imitation gemstones. The articles are not finished but have raw edges. The fabric portion is clearly visible. According to the witness, after importation the pieces are lined to give them shape and body. Pink fabric is used to match the other part of the garment. The witness said he did not want the pink material to be seen but he had to use something to put the beads on. He stated that the fabric cost 17 or 18 cents and the beads, pearls, and stones 42 cents.

Exhibit 2 is a sketch, purporting to represent style No. 4014, consisting of a front bodice with two back panels and a little turtleneck. Mr. Bryan said it is made of a polka-dotted fabric which is sent overseas to have beaded designs put on to cover the dots. When the parts are sewn together, the article is a completed blouse. Style No. 4014 was conceded to be in chief value of fabric.

Collective exhibit 3 consists of a front, two back panels and two sleeves for the bodice of style No. 8051. The fabric portion is pink lace or net and it is ornamented with bugles, spangles, and beads. This exhibit was conceded to be in chief value of fabric. According to the witness, a skirt came with this style, but he could not find a sample. He said that all that needed to be done to form a complete garment was to sew the pieces together and to cut and sew the lining.

Collective exhibit 4 consists of two beige net articles elaborately ornamented with beads, bugles and stones but with some of the textile fabric visible. The witness said the articles would form the beaded top of a velvet or satin dress identified as style No. 8062. These two parts are needed to form a Fabiana neckline to complete the garment. According to the witness, the cost of the fabric was 13 cents and the beading material $1.19.

Illustrative exhibit 5 consists of a yellow belt with backing, ornamented with beads and bugles. According to the witness, the merchandise comes in without the backing and is used with style No. 1166. It was designed to be a belt but could also be used to make a cummerbund in which case it might be sewn right into the garment. The witness said the fabric was polyester chiffon which came from Japan and cost roughly 12 cents. The beading material cost 40 cents.

Collective exhibit 6, representing style No. 8071, consists of two pieces of pink material ornamented with bugles and various sized stones. According to the witness, the two pieces form a collar or swirl. The fabric is cut here and the collars sent to Hong Kong for beading. When the beaded parts are returned, they are lined and sewn onto the dress to complete it. The pink colored material was used to match the particular dress for which it was designed. The fabric had to come from the same dye lot. Mr. Bryan said the cost of the fabric just before it was joined with the beads was 20 cents and the beading approximately $1.10.

Collective exhibit 7, representing style No. 8078, consists of three pieces of velvet ornamented in part with beads, stones, and embroidery. Mr. Bryan said the velvet was purchased and the embroidery done here, after which the pieces were sent overseas for beading. When the pieces are lined and assembled, they form a top for a long pair of pleated polyester pants or a long pleated chiffon skirt. The top is a complete garment in itself. It was conceded that this merchandise was in chief value of fabric.

There is no sample of style No. 21504, but the witness stated it was a beaded lace dress or parts.

Exhibit 8 is a letter from the Bureau of Customs referring to samples of collars, cuffs, or belts ornamented with beads, spangles, bugles, or imitation gemstones. The opinion of the Bureau was that the samples in which a considerable portion of the fabric was visible was classifiable as wearing apparel under item 382.04 and that the sample in which the material beyond the beaded area was to be cut away would qualify as a fabric fully covered by beads and bugles, dutiable under item 741.50.

Exhibit A is a certified copy of a judgment of conviction of the witness Jack A. Bryan of knowingly and wilfully introducing garments

and garment parts into the commerce of the United States by the use of false statements and fraudulent practices to conceal material facts from the Bureau of Customs.

Exhibit B consists of a piece of fabric fully covered by beads and stones in such a way that the fabric is barely visible.

The district director classified the imported merchandise as women's wearing apparel, ornamented, under item 382.02 or item 382.04, *supra*. Plaintiff claims, however, that the imported merchandise is not wearing apparel but dress parts and that the TSUS item numbers do not provide for parts of wearing apparel.

Parts of an article are not included within an *eo nomine* designation of the article itself unless there is a specific provision for parts. *Murphy & Co. et al.* v. *United States*, 13 Ct. Cust. Appls. 256, T.D. 41201 (1925); *United States* v. *Draeger Shipping Co.*, 18 CCPA 308, T.D. 44561 (1931); *Herman Miller Clock Co.* v. *United States*, 22 CCPA 332, T.D. 47363 (1934); *United States* v. *Lyons Transport*, 45 CCPA 104, C.A.D. 681 (1958); *Pacific Fast Mail* v. *United States*, 68 Cust. Ct. 41, C.D. 4333, 338 F. Supp. 506, *appeal dismissed*, 59 CCPA 223 (1972).

The term wearing apparel, however, is a generic or descriptive one. *Jaeger's Sanitary Woolen System Co.* v. *United States*, 11 Ct. Cust. Appls. 181, T.D. 38962 (1921). Under prior tariff acts it was held to mean all articles of wearing apparel worn by human beings for reasons of decency, comfort and adornment. *Arnold* v. *United States*, 147 U.S. 494 (1893); *Guthman* v. *United States*, 1 Ct. Cust. Appls. 170, T.D. 31214 (1911); *Antonio Pompeo* v. *United States*, 40 Cust. Ct. 362, C.D. 2006 (1958); *United Merchandising Corp.* v. *United States*, 44 Cust. Ct. 420, Abstract 64074 (1960).

Former tariff acts contained provisions for "Clothing, ready-made, and articles of wearing apparel of every description * * * made up or manufactured, wholly or in part, by the tailor, seamstress or manufacturer" (Tariff Act of 1897, paragraph 390; Tariff Act of 1909, paragraphs 324, 382, 402; Tariff Act of 1913, paragraphs 256, 291, 317) or for "Clothing, and articles of wearing apparel of every description, * * * whether manufactured wholly or in part" (Tariff Act of 1922, paragraphs 1017, 1115, 1210; Tariff Act of 1930, paragraphs 919, 1017, 1115(a), 1210, 1311).

Under such provisions the following have been classified as wearing apparel: Collars and cuffs, parts of collars, collars and cuffs which have only to be cut from the piece, collarettes, belts, and shirt bosoms. *Massce & Co.* v. *United States*, 18 CCPA 243, T.D. 44424 (1930); *Taxis* v. *United States*, 1 Ct. Cust. Appls. 92, T.D. 31109 (1910); *Krusi* v. *United States*, 1 Ct. Cust. Appls. 168, T.D. 31213 (1911); *J. Sachs &*

Co. v. *United States*, 24 Treas. Dec. 670, T.D. 33406 (1913); *Frank & Simmons* v. *United States*, T.D. 16583, G.A. 3279 (1895); *Borah Bros.* v. *United States*, 12 Cust. Ct. 13, C.D. 825 (1944); *United States* v. *Snow's United States Sample Express Co.*, 6 Ct. Cust. Appls. 120, T.D. 35388 (1915).

In *Sand & Siman* v. *United States*, 73 Treas. Dec. 901, T.D. 49594 (1938), it was held that cuffs to put on gloves to complete them were not classifiable as gloves, finished or unfinished, because the provision for gloves would not cover parts of gloves, but that they were classifiable under the provision for "articles of wearing apparel of every description, manufactured wholly or in part * * *." The court said that the test for classification under that provision was that the imported merchandise must be so far advanced in manufacture as to be at least a part of a particular article of wearing apparel.

In *United States* v. *G. L. Ramsey % Juvenile Mfg. Co.*, 42 CCPA 106, C.A.D. 580 (1955), the merchandise consisted of baby dress fronts which had been exported to Mexico to be embroidered. Previously material had been cut into fronts, backs, sleeves, neckbands, collars and cuffs for complete garments. The parts were all earmarked for size and color so that upon the return of the merchandise, the proper dress fronts, backs, sleeves, neckbands, collars and cuffs could be matched and united, the neckband finished off, and buttons attached. They then constituted complete garments. They were held dutiable under a provision in paragraph 1529(a), Tariff Act of 1930, as modified, for "Articles of wearing apparel, finished or unfinished, * * * in whole or in part of machine-made lace, or embroidered * * *," rather than under the provision for "fabrics and articles embroidered * * * and fabrics and articles wholly or in part thereof, finished or unfinished * * *." The court agreed with the conclusion of the Customs Court that the dress fronts consisted of articles of unfinished wearing apparel, that is, unfinished baby dresses, and stated (pp. 108–109):

> The court in reaching its conclusion proceeded on the basis that the involved legislation explicity provides not only for wholly completed fabrics and articles of wearing apparel but also for articles which, although embroidered, are otherwise unfinished and exclusively dedicated to use as part of a specific garment. In a painstaking and well-considered decision a list of authorities defining the principle of law applicable to the issues presented was accurately analyzed by the court, including, for example, *United States* v. *Snow's U.S. Sample Express Co.*, 6 Ct. Cust. Appls. 120, T.D. 35388, 28 Treas. Dec. 750; *United States* v. *Cartier (Inc.)*, 15 Ct. Cust. Appls. 334, T.D. 42493; *In re Mills et al.*, 56 Fed. 820.
>
> With respect to the case last cited, the court made this pertinent comment:

In construing the phrase "made up wholly or in part" in Mill's case in the United States Circuit Court for the Southern District of New York (56 Fed. 820), Judge Lacombe used this language:

> I think the true criterion when it is applied to wearing apparel is this: That it must at least be made up sufficiently far to enable us to identify the particular article of wearing apparel that is going to be made out of it.

Likewise in *Bata Shoe Co., Inc.* v. *United States*, 6 Cust. Ct. 50, C.D. 423 (1941), the court cited many cases and concluded (p. 52):

> A careful reading of the numerous decisions cited, *supra*, we think will show that the uniform construction by this court of the provision for wearing apparel manufactured in whole or in part has been, in effect, to regard a definite part of an article of wearing apparel as wearing apparel manufactured in part. At any rate such rule of construction, commencing with the Tariff Act of 1890 and continuing under the succeeding tariff acts up to the present time, we think is now too long established under the well-known principle of legislative sanction of judicial interpretation to be now disturbed or questioned. The construction contended for by counsel for the Government would probably be more proper and logical if the said provision was simply for wearing apparel, finished or unfinished, instead of for wearing apparel, manufactured wholly or in part.

The court is now confronted with the provision in the tariff schedules for wearing apparel, with the phrases "assembled or not assembled" and "finished or not finished" being supplied by General Interpretative Rule 10(h). Was there an intent to exclude merchandise such as that involved herein from classification as wearing apparel?

The Tariff Classification Study, Schedule 3, part 6, pp. 223 and 228, states:

> Part 6 covers handkerchiefs, mufflers, scarves, shawls, veils, neckties, hosiery, garters, suspenders, body-supporting garments, rainwear, underwear, and other articles of textile wearing apparel except footwear, headwear, and gloves which are specifically provided for in schedule 7.
>
> * * * * * * *
>
> Items 380.03 through 382.37 do not involve significant rate changes. The shirt collars and cuffs of vegetable fibers covered by items 380.30 and 380.48 are presently dutiable at compound rates of duty. In the proposed provisions such rates have been converted to their ad valorem equivalents.

In *The Baylis Brothers, Inc.* v. *United States*, 60 Cust. Ct. 336, C.D. 3383, 282 F. Supp. 791 (1968), *aff'd*, 56 CCPA 115, C.A.D. 964, 416 F.2d 1383 (1969), neither court nor counsel indicated that the change of language in TSUS was significant. That case involved smocked

dress fronts, some of which were dutiable under the Tariff Act of 1930, as modified, and some of which were dutiable under TSUS. The Customs Court said (p. 337):

> * * * Counsel for the respective parties stipulated that the imported merchandise consists of unfinished wearing apparel wholly or in chief value of cotton. Although the dress fronts are unfinished articles, they are covered by paragraph 1529(a) by reason of the prefatory statement to such paragraph, as they are covered by the relevant TSUS tariff descriptions by reason of General Interpretative Rule 10(h) of said TSUS which provides:
>
> > unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

In view of the fact that in TSUS it was sought to limit the merchandise falling within basket clauses (Tariff Commission Submitting Report, pp. 15–16), it seems unlikely that Congress would have relegated articles which had been classified since 1890 as unfinished wearing apparel to a basket provision for articles, not specially provided for, of textile materials. On the contrary, the Tariff Classification Study, Schedule 3, p. 249 states:

> * * * Inasmuch as the significant articles of trade have been specially provided for systematically throughout schedule 3 and in a number of special provisions in schedule 7, there seems little likelihood that subpart B of part 7 [Textile Articles Not Specially Provided For] would cover very much in the way of significant imports.

In support of its position that the instant merchandise is not classifiable under the TSUS provisions for wearing apparel, plaintiff relies upon *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5 C.A.D. 1109, 486 F.2d 1062 (1973). In that case it was held that merchandise consisting of wooden headboards, footboards, posts, ladders and guardrails in unassembled condition were classifiable as parts of furniture under item 727.40 rather than as furniture under item 727.35, in view of the absence of siderails which the court found were essential parts of bunk beds. The court stated:

> We find no error in the lower court's holding that parts of an article may be classified as the unfinished article itself only when the imported pieces constitute a substantially complete article, albeit in unassembled condition. We fully agree that the definition of "unfinished" found in *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938) and carried over to the TSUS in *Finn Bros., Inc.* v. *United States*, 59 CCPA 72, 454 F.2d 1404, C.A.D. 1042 (1972) can be, and has been, employed only to distinguish, in the sense of the tariff schedules, the status of an unfinished article from the material of manufacture. The so-called

"dedication to use" test found in those cases makes no distinction whatsoever between the unfinished article and parts thereof.

In that case there were specific tariff provisions for both furniture and parts of furniture, whereas in the instant case the provision is for wearing apparel, a term that has been given broad interpretation under tariff statutes.

It is clear from the testimony and the exhibits here that the imported pieces are unfinished. They have raw edges which have to be folded and pasted or sewn and joined with other parts of a garment and sewn together. Most of them are to be backed or lined. Each is dedicated to use as a particular article of wearing apparel or to be attached to the particular garment for which it was designed. Under *United States* v. *G. L. Ramsey a/c Juvenile Mfg. Co.*, *supra*, and *The Baylis Brothers, Inc.* v. *United States*, *supra*, they would be classifiable as wearing apparel unfinished, even though all the parts were not included in the importation.

In view of General Interpretation Rule 10(h), the long-continued interpretation of the term "wearing apparel" in tariff acts, and the legislative history, I find that the imported articles are wearing apparel, unfinished and unassembled, and are classifiable as wearing apparel under TSUS. While a lining or a backing has to be supplied to complete some of the articles, they are incidental parts of the garment and are not so essential as to prevent classification of the merchandise as wearing apparel. *Cf. Finn Bros., Inc.* v. *United States*, 59 CCPA 72, C.A.D. 1042, 454 F.2d 1404 (1972), where ivory roses were considered unfinished jewelry when all that was lacking was the earring back or pin.

Wearing apparel of textile materials is classifiable under schedule 3 of the tariff schedules. Plaintiff claims, however, that the merchandise represented by exhibits 1, 4, 5, and 6 is excluded from that classification by reason of the definition of "ornamented" in headnote 3, schedule 3, *supra*, on the ground that the fabric is not visible in significant part.

Exhibits 1 and 6 are both collars of pink fabric with the same type of ornamentation. While the witness said he could not see the fabric portion of exhibit 1 without glasses, he admitted he could see the material in exhibit 6 because the beading was in an open latticework design. He stated that the pink material was used to match the particular apparel for which the merchandise was designed. An examination of the samples reveals that a considerable portion of the fabric is visible.

Illustrative exhibit 5 is the completed belt made of the imported beaded material. The yellow fabric portion is visible and lends color

to the article. According to the witness, it is designed for a particular style dress. It appears that the color would be significant either to match the dress or as a contrasting color.

Collective exhibit 4 consists of a loosely woven net fabric in a light beige color, highly ornamented, but not fully covered with beads, stones or bugles. According to the witness, the overall appearance is beading and when worn, the fabric would not be seen from 6 feet away. However, from an examination of the sample, it appears that the net fabric remains visible whether the article is used over other materials or is used as a dress top worn against the skin. It is a significant part of the design, setting off the various portions from each other.

I conclude, therefore, that the merchandise represented by exhibits 1, 4, 5, and 6 are ornamented articles of textile fabric within the meaning of headnote 3, schedule 3, *supra*. It is not classifiable under item 741.50, whether or not in chief value of beads, bugles, and gemstones, by reason of headnote 3(c), schedule 3, *supra*.

For the reasons stated, the claims in the amended complaint are overruled. The action is dismissed and judgment will be rendered accordingly.

(C.D. 4542)

ORNAMETALS, INC. *v.* UNITED STATES

Sissy bars

PARTS OF MOTOR VEHICLE FURNITURE—PARTS OF MOTORCYCLES

Plaintiff failed to prove that the imported metal bars, made for attachment to motorcycles were other than ornamental. Plaintiff failed to prove they were chiefly used as the back part of motorcycle seats or generally as parts of motorcycles.

Court No. 72-3-00523

Port of Calexico (San Diego)

[Judgment for defendant.]

(Decided May 17, 1974)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Patrick D. Gill* and *David B. Greenfield*, trial attorneys), for the defendant.

WATSON, Judge: This action places in issue the classification of imported "sissy bars", articles of shaped and welded metal bars made

for attachment to motorcycles. The importations were classified as other articles of iron or steel pursuant to item 657.20 of the Tariff Schedules of the United States, as modified by T.D. 68–9, and were assessed with duty at the rates of 13% and 11% ad valorem depending on the date of entry.

Plaintiff claims classification either as parts of furniture designed for motor vehicle use, dutiable pursuant to item 727.06 of the TSUS at the rates of 5.5% or 5% ad valorem or as parts of motorcycles, dutiable pursuant to item 692.55 at the rates of 8% or 7% ad valorem.

Four exhibits representative of the merchandise at issue were introduced in evidence. They are essentially V-shaped bars of metal approximately 3 feet in length from the point of the V to the open end. The distance between the tips at the open end is approximately 8 inches. The bars are bent approximately 1 foot from the open end so that an angle of approximately 100 degrees is created between the open end segment and the closed end segment.

Five witnesses were heard from regarding the development and use of "sissy bars". From the testimony, I gather that sissy bars were developed as a scaled-down imitation of more outlandish designs attached to the customized motorcycles of certain trend-setting motorcycle club members. Members of the so-called "chopper element" would modify their motorcycles in various manners including the fastening of metal bars to the seat or frame so that they protruded into the air behind the seat. The bars often had symbolic shapes incorporated into the design.

Plaintiff's witnesses emphasized the useful aspects of the importations stressing such uses as a backrest for driver or passenger or a place to fasten luggage or bedding. Defendant's witnesses emphasized the ornamental or decorative aspects of the sissy bars.

Based on my understanding of the testimony, examination of the exhibits and study of the case law, I am of the opinion plaintiff has failed to prove the imported articles are chiefly used either as parts of motor vehicle furniture or as parts of motorcycles. As to the first claim, assuming that motorcycle seats are furniture within the meaning of item 727.06, I am not persuaded the importations are the back part of the seat rather than an ornament whose position happens to be to the rear of the seat. In this regard, a comparison with the automobile headrests at issue in *Vilem B. Haan et al.* v. *United States*, 67 Cust. Ct. 104, C.D. 4260 (1971), is revealing.

In the *Haan* case, adjustable headrests, which slipped over the back of an automobile front seat and extended the support and protection of the seat to the head and neck, were held to be parts of motor vehicle furniture. The design intention and function of the headrests were unmistakably clear and their contribution to the safe

operation of the automobile undeniable. The same cannot be said of these "sissy bars". I do not find they were designed to provide a back for motorcycle seats or that when installed they are chiefly used as a seat back. I am of the opinion, based on the testimony, that the use of the "sissy bar" alone as a seat back is an unusual adaptation requiring an unconventional and uncomfortable driving posture. I am further inclined to this view in light of the testimony that bedrolls or custom-designed pads are used to make the "sissy bar" more comfortable when used as a backrest. This suggests to me that in its original form the sissy bar is not normally useful as a backrest. For the above reasons, the importations cannot be classified as parts of motor vehicle furniture.

Plaintiff's claim for classification as parts of motorcycles is similarly without merit. Aside from use as a backrest which I have previously characterized as unusual and the possible use as a convenient protrusion to which bedrolls, knapsacks or luggage may be lashed, I find no ground to believe the "sissy bars" are useful in the operation of a motrocycle. I consider them far less utilitarian than the rear luggage carriers in *Ted L. Rausch, Rocky Cycle Co.* v. *United States*, 63 Cust. Ct. 367, C.D. 3920 (1969). In that case specially designed luggage carriers, made for attachment to motorcycles, were held not to be parts of motorcycles on the ground they did not contribute to the operation of the motorcycle as essentially a passenger carrying vehicle. Cf. *Herbert G. Schwarz, dba Ski Imports* v. *United States*, 57 CCPA 19, C.A.D. 971, 417 F. 2d 1391 (1969).

Since I find the bars at issue to be primarily ornamental and decorative, they do not begin to be useful in the sense in which a part must be useful. Accordingly, they cannot be parts of motorcycles. See, *Trans Atlantic Company* v. *United States*, 48 CCPA 30, C.A.D. 758 (1960). See also, *Mattel, Inc.* v. *United States*, 61 Cust. Ct. 75, C.D. 3531, 287 F. Supp. 999 (1968); *Oxford International Corp.* v. *United States*, 72 Cust. Ct. 187, C.D. 4540 (1974).

For the reasons set out above, the classification of the importations as other articles of iron or steel under item 657.20 must be sustained. Judgment will issue accordingly.

(C.D. 4543)

SYMPHONIC ELECTRONICS CORP. *v.* UNITED STATES

Solid-state (tubeless) radio receivers

"RADIO RECEIVERS"—COMMON MEANING

"Radio receivers" within the common meaning of the term include tuner-amplifiers which, in addition to receiving radio signals

(i.e., AM/FM), are capable of controlling and amplifying signals from a record changer and tape player connected by wires to the tuner-amplifier. Thus, tuner-amplifiers were not more than "radio receivers" by reason of the fact that their controls and amplifying capability could be shared or utilized by the other components of a combination article wired (after importation) to the tuner-amplifier, such as a phonograph turntable or tape player.

RADIO RECEIVERS—PARTS OF COMBINATION ARTICLES—RULE 10(ij)

A specific provision for parts of a combination article prevails over a general provision for parts of such combination article. Hence, tuner-amplifiers are properly dutiable under the *eo nomine* provision for "solid-state (tubeless) radio receivers" in item 685.23, TSUS, notwithstanding the fact that after importation such tuners were incorporated into combination radio-phonographs and other combination articles as parts thereof. General Interpretative Rule 10(ij).

RADIO RECEIVERS—SUBSTANTIALLY COMPLETE WITHOUT SPEAKERS

The tuner-amplifiers in issue were substantially complete "radio receivers" within the purview of item 685.23, TSUS, although imported without speakers. Cf. *Montgomery Ward & Co., Inc.* v. *United States*, 70 Cust. Ct. 193, C.D. 4430, 362 F. Supp. 560 (1973) (*appeal pending*).

RADIO RECEIVERS—"UNASSEMBLED"—RULE 10(h)

Tuner-amplifiers and their transformers, imported together, but packed separately, were "unassembled" solid-state radio receivers within the purview of General Interpretative Rule 10(h).

TUNER-AMPLIFIERS—SPECIALLY PROVIDED FOR AS "RADIO RECEIVERS"

Since tuner-amplifiers were specially provided for under the *eo nomine* provision in item 685.23, TSUS for "solid-state (tubeless) radio receivers", they cannot be classified either under the provision in item 678.50, TSUS for machines not specially provided for, and parts thereof, or under the provision in item 688.40 for electrical articles, for electrical parts of articles, not specially provided for.

"EO NOMINE" DESIGNATION

In determining the classification of goods, an *eo nomine* designation must, in the absence of a clearly contrary legislative intent, be preferred to terms of general description and to enumerations which are broader in scope and less specific. *United States* v. *Astra Trading Corp.*, 44 CCPA 8, C.A.D. 627 (1956).

TUNER-AMPLIFIERS—NOT "UNFINISHED" COMBINATION ARTICLES

Since tuner-amplifiers lacked basic components of a phonograph and tape recorder, they were not within the purview of either item 685.30, TSUS as an "unfinished" radio-phonograph combination, or item 685.50 as an "unfinished" radio-phonograph-tape recorder combination. Cf. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973).

Court Nos. 70/56204 and 70/64354

Port of Boston

[Judgment for defendant.]

(Decided May 20, 1974)

Barnes, Richardson & Colburn (*Irving Levine* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*John N. Politis*, trial attorney), for the defendant.

NEWMAN, Judge: These two consolidated protests concern the proper dutiable status of certain merchandise invoiced as "R835 AM/FM tuners" imported by plaintiff from Taiwan through the port of Boston, Mass. in June 1970.

The merchandise was classified by the district director of customs as "solid-state (tubeless) radio receivers" under item 685.23 of the Tariff Schedules of the United States (TSUS), modified by T.D. 68–9, and assessed with duty at the rate of 11 per centum ad valorem.

Plaintiff advances five alternative claims under the following TSUS item numbers: 685.25, 685.30, 685.50, 678.50 and 688.40. The primary claim is that the imports are dutiable at the rate of 8.5 per centum ad valorem as radio reception apparatus or parts thereof, other than solid-state radio receivers, under item 685.25, TSUS. Alternatively, plaintiff contends that the R835 tuner has the capability of switching from one function to another, i.e., from radio to phonograph, or tape recorder, and therefore is dutiable at the rate of 9.5 per centum ad valorem under item 685.30 as a radio-phonograph combination, or at the rate of 10 per centum ad valorem under item 685.50 as a radio-phonograph-tape recorder combination, or part thereof.

Plaintiff's claims that the merchandise is properly dutiable under item 678.50 as machines or parts thereof, not specially provided for, at the rate of 7 per centum ad valorem, or under item 688.40 as electrical articles or electrical parts of articles, not specially provided for, at the rate of 8 per centum ad valorem, are based upon the contention that "this imported article [R835 tuner] is chiefly used in a radio-phonograph-tape *player* combination (incapable of tape recording but only of playing pre-recorded materials) and, therefore, is outside the scope of the provision(s) for tape recorder combination articles".

All of plaintiff's claims are predicated upon the argument that the R835 tuner is more than a "radio receiver"; [1] and respecting the claim

[1] There is no dispute between the parties that the R835 tuner is a solid-state (tubeless) device.

that the merchandise is a combination article, plaintiff relies upon General Interpretative Rule 10(h), viz.: the R835 tuner is an "unfinished" combination article.

Defendant contends that although the merchandise is radio reception apparatus within the superior heading to items 685.20 through 685.25, TSUS, the tuner possesses the basic elements of a solid-state radio receiver, and hence is specifically provided for under item 685.23. Since allegedly, certain transformers were imported with the R835 tuners but were packed separately, and the tuners require a minimal amount of additional work to complete them, defendant relies upon the provisions of General Interpretative Rule 10(h).

Further, defendant argues that while the R835 tuners were used after importation to manufacture combination articles, they cannot be classified either under item 685.30, or under item 685.50, because in their condition as imported the tuners were merely radio receivers and not substantially complete combination articles; and defendant insists that the tuners cannot be classified as "parts" in contravention of General Interpretative Rule 10(ij).

Finally, defendant denies the applicability of items 678.50 and 688.40 since the imports were specially provided for under item 685.23.

I have concluded that the merchandise was properly classified by the Government under item 685.23, TSUS, and therefore the protests are overruled.

STATUTES INVOLVED

General Headnotes and Rules of Interpretation

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Schedule 6, part 5:

* * * radiobroadcasting * * * and reception apparatus, and * * * record players, phonographs, tape recorders, * * * record changers, * * *; all of the fore-

	going, and any combination thereof, * * * and parts thereof:	
	* * * * * * *	
	* * * radiobroadcasting and * * * reception apparatus, and parts thereof:	
	* * * * * * *	
	Other:	
685.23	Solid-state (tubeless) radio receivers	11% ad val.
685.25	Other	8.5% ad val.
685.30	Radio-phonograph combinations	9.5% ad val.
	* * * * * * *	
	Other:	
	* * * * * * *	
685.50	Other	10% ad val.
	* * * * * * *	
688.40	Electrical articles, and electrical parts of articles, not specially provided for	8% ad val.
	Schedule 6, part 4, subpart H:	
678.50	Machines not specially provided for, and parts thereof	7% ad val.

The Issues

The basic issues for decision are:

1. Were the imported tuners properly classified as solid-state radio receivers under item 685.23?

2. Are the tuners properly dutiable as radio reception apparatus or parts thereof, other than solid-state radio receivers, under item 685.25?

3. Is the R835 tuner "more than" a solid-state radio receiver and classifiable as an unfinished combination radio-phonograph under item 685.30, or an unfinished radio-phonograph-tape recorder under item 685.50?

4. Is the R835 tuner classifiable as a machine not specially provided for, or a part thereof, under item 678.50?

5. Is the R835 tuner classifiable as an electrical article or an electrical part of an article, not specially provided for, pursuant to item 688.40?

The Record

The record comprises the testimony of one witness on behalf of plaintiff, and three witnesses on behalf of defendant. Additionally,

each party submitted several exhibits. Based upon the foregoing record, I make the following findings of fact and conclusions of law:

Findings of Fact

1. The entries covered by these protests include R835 AM/FM tuners and an equal number of power transformers separately packed.[2]

2. The transformers served as a power source and are essential to the functioning of the tuners. After importation, the transformers were connected to the tuners by wires.

3. A "tuner" is a device which is capable of receiving radio signals, while a "radio receiver" is comprised of a tuner plus an amplifier.

4. The R835 tuners possess the basic components [3] and circuitry necessary for receiving AM, FM, and FM stereo multiplex signals, and also possess sufficient amplifying capability to operate loudspeakers. However, a "radio receiver" does not necessarily include loudspeakers.[4]

5. R835 tuners have the following controls: on/off; function, which enables the user to select a particular function such as AM radio, FM radio, FM stereo multiplex, record player or tape player; tuning; volume; bass and treble; balance; and automatic frequency control (AFC). In its imported condition, the tuners had no control knobs or calibrated station dial.

6. The R835 tuners were designed and intended for incorporation into combination radio-phonographs (with or without tape player or recorder). The tuners were never sold by plaintiff as "radio receivers" *per se*, but always were incorporated into combination articles containing at least a radio and record player.

7. In a combination radio-phonograph, the tuner is connected by wires or cables to the transformer shipped therewith and to a record changer and speakers. Signals are transmitted through the wiring from the record player to the amplification section of the tuner which amplifies the signals and then transmits them to the speakers where the signals are rendered audible. At the completion of a record cycle, the record changer turns off the combination radio-phonograph. Thus, in a combination radio-phonograph, the record changer utilizes the amplifying capability of the R835 tuner and also usese the various controls on the tuner (on/off, function sleector, volume, bass, etc.).

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[2] This fact was in dispute at the trial, but plaintiff now concedes in its brief "that accompanying the tuners were an equal number of power transformers of the type used with the R835 tuner." Accordingly, the term "tuners" or "R835 tuners" shall hereinafter be intended to include the transformers.

[3] Both plaintiff's witness Freeland and defendant's witness Kulinyi testified that the basic components of a "radio receiver" are a tuner and amplifier, and that the R835 tuner possessed such components (R. 69–70, 122–123).

[4] Plantiff's witness Freeland and defendant's witnuess Mergner and Kulinyi all agreed that "radio receivers" do not necessarily include loudspeakers (R. 70 101–102, 131).

When the function selector is turned to the position for the phonograph or tape player, the tuner does not receive radio signals.

8. A tape player also can utilize the amplifying capability and controls of the tuner. The tape player is activated upon insertion of a cartridge into the player and stops upon removal of the cartridge. However, if the a.c. switch of the tuner were turned to the off position, the power to the tape player would be cut off.

9. "Radio receivers" which have provisions for connecting to a phonograph turntable and to tape equipment are sold by plaintiff's competitors. Such receivers are sold as separate components, and also in combination with a record changer, tape equipment and speakers (called a "package").

10. Radio receivers sold as individual components have a plug strip on the back for connecting other components.[5] Such receivers, however, serve the same function as those used in combination articles—the controls of the receiver are utilized by the phonograph or tape player, and the amplifier portion of the receiver amplifies the signals from the phonograph or tape player.

Conclusions of Law

1. The R835 tuners are "radio receivers" within the common meaning of that term.[6]

2. "Radio receivers" within the common meaning of the term include tuner-amplifiers which, in addition to receiving radio signals (i.e., AM/FM), are capable of controlling and amplifying signals from a record changer and tape player connected by wires to the tuner-amplifier. Consequently, the R835 tuners are not more than "radio receivers" by reason of the fact that their controls and amplifying capability could be shared or utilized by the other components of a combination article wired (after importation) to the tuner, such as a phonograph turntable or tape player.[7] In their condition as imported, the R835 tuners do not have any features or capabilities which are

[5] The R835 tuner has "terminals" for connecting wiring or cables to other components.

[6] *Encyclopaedia Britannica*, 1970 ed., Vol. 11, pp. 485–86, states: "A 'tuner' is employed for reception of radio broadcasts. The hi-fi tuner is simply a refined version of a radio receiver, but without audio amplifier or loudspeaker. * * * [*W*]*hen a radio tuner is combined with an integrated amplifier, the resulting unit is referred to as a 'receiver'*". [Emphasis added.] See also footnote 3.

[7] If the imports are more than "radio receivers" (due to the fact that their controls and amplifying capability could be utilized by a phonograph or tape player with which the radio is combined after importation), then clearly the imports are more than radio reception apparatus, which is plaintiff's principal claim.

While not directly pertinent to the present issue, in *Garrard Sales Corp. v. United States*, 35 CCPA 39, 42, C.A.D. 369 (1947), the appellate court held that a combination radio-phonograph was more than either a radio or phonograph, and in that connection observed:

> "It is not disputed that *without the record changer unit the phonograph-radio combination would be just a radio set* * * *." [Emphasis added.]

not possessed by "radio receivers" within the common meaning of that term.

3. A specific provision for parts of a combination article prevails over a general provision for parts of such combination article. Hence, the R835 tuners are properly dutiable under the *eo nomine* provision for "solid-state (tubeless) radio receivers" in item 685.23, TSUS, notwithstanding the fact that after importation such tuners were incorporated into combination radio-phonographs and other combination articles as parts thereof. General Interpretative Rule 10(ij).

4. The R835 tuners are substantially complete "radio receivers" within the purview of item 685.23, TSUS.[8] Loudspeakers are not necessarily included in "solid-state (tubeless) radio receivers" within the purview of item 685.23, TSUS. Cf. *Montgomery Ward & Co., Inc.* v. *United States*, 70 Cust. Ct. 193, C.D. 4430, 362 F. Supp. 560 (1973) (*appeal pending*).

5. Since the R835 tuners were packed separately from the transformers, the imports are "unassembled" solid-state radio receivers within the purview of General Interpretative Rule 10(h).

6. The R835 tuners are *specially provided for* under the *eo nomine* provision in item 685.23, TSUS for "solid-state (tubeless) radio receivers". Thus, the tuners are not classifiable under item 685.25, TSUS as radio reception apparatus, other than solid-state radio receivers; nor are they classifiable under the provision in item 678.50, TSUS for machines not specially provided for, and parts thereof; nor are they classifiable under the provision in item 688.40 for electrical articles, and electrical parts of articles, not specially provided for. Moreover, in determining the classification of goods, an *eo nomine* designation must, in the absence of a clearly contrary legislative intent, be preferred to terms of general description and to enumerations which are broader in scope and less specific. *United States* v. *Astra Trading Corp.*, 44 CCPA 8, C.A.D. 627 (1956).

7. Since the R835 tuner lacks the basic components of a phonograph and tape recorder, the tuner is not within the purview of either item 685.30 as an "unfinished" radio-phonograph combination, or item 685.50 as an "unfinished" radio-phonograph-tape recorder combination. Cf. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973).

The protests are overruled, and judgment will be entered accordingly.

[8] It is interesting to note that the first radio receiver, demonstrated by Heinrich Hertz in Germany in 1887, consisted simply of an open wire loop with spheres attached to the ends to form a gap. The presence of radio waves was "detected" by observing a spark set up on the sphere gap. See *Encyclopaedia Britannica*, 1970 ed., Vol. 18, p. 1090.

(C.D. 4544)

F. W. MYERS & CO., INC.
A. H. BOTTORFF CO. } *v.* UNITED STATES

Special dumping duties—1921 Antidumping Act

Under the Antidumping Act of 1921, if a finding of dumping is published by the Secretary of the Treasury, customs officers are required to assess antidumping duties which are equal, if the exporter and importer are not related, to the amount by which the importer's purchase price for the merchandise is less than the foreign market value. In assessing these duties, in the event sales in the home market are made under circumstances which differ from those incurred in sales to the United States, adjustments to foreign market value must be made by the customs officers for such differences in order to place the sales on a basis as nearly equivalent as practicable.

Held: Plaintiffs have not proven that the district director of customs, in determining the amount of special dumping duties involved here, erred in failing to make an appropriate allowance in computing foreign market value for the difference between the Canadian home consumption price and the export price to the United States.

SPECIAL DUMPING DUTIES—WITHHOLDING OF APPRAISEMENT

Construing the customs regulations in *pari materia*, customs appraisers are required to withhold appraisements on shipments subject to possible special dumping duties upon receipt of the Commissioner of Customs' original "Withholding of Appraisement Notice."

SPECIAL DUMPING DUTIES—SALES AT LESS THAN FAIR VALUE

Under the Antidumping Act, the court may review the Secretary of the Treasury's findings of sales at less than fair value only to determine whether the Secretary acted within the scope of his authority and correctly construed the pertinent statutory language. The court may not go further and weigh the evidence or review the conclusions the Secretary drew therefrom.

Court Nos. R67/10201, etc. R67/16567, etc.

Port of Detroit

[Judgment for defendant.]

(Decided May 28, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrenois*, trial attorney), for the defendant.

James R. Sharp, amicus curiae.

MALETZ, Judge: These actions, which were tried jointly, involve the assessment under the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.) of special dumping duties against various styles of hand-operated steel jacks that were manufactured and sold by J. C. Hallman Manufacturing Co., Limited of Kitchener, Ontario, Canada (Hallman) and purchased by A. H. Bottorff Co., Inc. of St. Joseph, Missouri (Bottorff).[1] The jacks were exported from Canada during the period from December 27, 1964 through June 8, 1966 and entered at the port of Detroit.

I

Helpful in understanding the issues in this case is a brief summary of the Antidumping Act and its administration.[2] In essence, that act provides that if a foreign exporter sells merchandise to the United States at a price less than its "fair value," i.e., the price charged by the exporter in his home market [3]—with resultant injury to a U.S. industry—a special dumping duty will be assessed upon the importation of the merchandise. If the exporter and importer are not related, this duty is measured by the difference between the higher "foreign market value" and the lower price charged the U.S. importer.

The question as to whether merchandise is being sold at less than fair value is determined by the Secretary of the Treasury. If the Secretary makes an affirmative finding in this regard, the question as to whether there is injury is determined by the Tariff Commission. If the Commission makes a determination of injury, the Secretary makes and publishes a finding of dumping. Once the finding of dumping has been published, customs officers proceed to assess and collect dumping duties which (as noted before) are equal, if the exporter and importer are not related, to the amount by which the American importer's purchase price is less than the foreign market value. In assessing such duties, in the event sales in the home market are made under circumstances which differ from those incurred in sales to the United States, adjustments must be made by the customs officers for differences in

[1] At a pretrial conference, plaintiffs abandoned their claims as to so-called "wheel-it" jacks which were covered by Court No. R67/16568 in the *Myers* action and Court No. R67/10202 in the *Bottorff* action. The remaining "wheel-it" jacks—which were covered by R67/10212 in the *Bottorff* action—were not referred to by plaintiffs in their pleadings, at the trial or in their brief and their claim as to this item is therefore deemed abandoned. See e.g., *Nurserymen's Exchange* v. *United States*, 41 Cust. Ct. 223, C.D. 2044 (1958).

[2] In setting out this summary, I have borrowed heavily from summaries of the act and its administration which were prepared for the Senate Committee on Finance by the Executive Branch and by a Special Assistant to the Secretary of the Treasury. See Vol. 1 *Compendium of Papers on Legislative Oversight—Review of U.S. Trade Policies*, Committee on Finance, United States Senate, Committee Print (90th Cong., 2d Sess., 1968) pp. 73 et seq., and pp. 156 et seq.

[3] "Fair value" is not defined in the law but, as later discussed, is defined in the customs regulations.

quantities and other circumstances of sale in order to place the sales on a basis as nearly equivalent as practicable.

With respect to administration of the act, antidumping investigations are usually triggered by the complaint of an affected domestic industry filed with the Commissioner of Customs. Upon receipt of such a complaint with supporting information, the Commissioner conducts a summary investigation to determine whether grounds exist for further consideration of the case. If he concludes that such grounds do exist, he publishes an "Antidumping Proceeding Notice" briefly describing what is at issue and conducts a preliminary investigation based on the examination of invoices and other information immediately available to him. Should the Commissioner determine from this preliminary investigation that reasonable grounds exist to believe or suspect that sales at less than fair value are taking place, he orders the withholding of appraisement of shipments of the merchandise being imported into the United States and publishes a "Withholding of Appraisement Notice." This action insures that in the event a dumping finding is made, the government will be able to collect any antidumping duties which may be due on these shipments.

After publishing the "Withholding of Appraisement Notice," the Commissioner conducts a full-scale investigation upon completion of which he makes a report of his findings to the Secretary of the Treasury. When the Secretary reaches his conclusion in the matter, he publishes a "Notice of Tentative Determination" which includes a statement of reasons for his action. Interested parties are thereupon given an opportunity to submit argument or appear in person in support of or in opposition to the tentative determination.

After examination of the arguments and evidence submitted in response to the tentative determination, the Secretary publishes a final determination. If the final determination is that sales at less than fair value are taking place, the case is referred to the Tariff Commission for a determination as to whether a U.S. industry has been injured. In turn, if the Commission, after such investigation as it deems necessary, makes a determination of injury, it so notifies the Secretary of the Treasury. The Secretary thereupon publishes a finding of dumping, and customs officers then assess antidumping duties on any shipment where, if the exporter and importer are not related, the U.S. purchase price is less than the foreign market value. As previously mentioned, in assessing such duties, if sales in the home market are made under circumstances which differ from those incurred in sales to the United States, adjustments in the duty amount are required to be made for differences in quantities and circumstances of sale.

II

Pertinent to the proceedings which led to the imposition of the dumping duties here in issue is section 201 of the Antidumping Act of 1921, as amended (19 U.S.C. 160),[4] which provides in relevant part:

> (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in sections 160–173 of this title called a "finding") of his determination and the determination of the said Commission. * * *
>
> (b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less * * * or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.
>
> (c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

Pursuant to these statutory provisions, the following administrative actions—which culminated in the present controversy—took place:

On April 23, 1965, the Acting Commissioner of Customs issued an "Antidumping Proceeding Notice"—which was published in the Fed-

[4] All U.S.C. references here and hereafter are to the 1964 edition.

eral Register on April 30, 1965 (30 F.R. 6123)—stating that the Commissioner of Customs had received information that steel jacks imported from Canada, manufactured by Hallman, were being, or likely to be, sold at less than fair value, and that the Bureau of Customs was instituting an inquiry into the matter.

On May 3, 1965, the Acting Commissioner of Customs issued a "Withholding of Appraisement Notice" which was published May 8, 1965 (30 F.R. 6445). The notice stated that there were reasonable grounds to believe or suspect that the "purchase price" or "exporter's sales price" was less or likely to be less than the "foreign market value" of steel jacks imported from Canada manufactured by Hallman and that the appropriate basis of comparison with "foreign market value" would be published in a supplemental notice in the Federal Register as soon as possible.[5] The notice also indicated that customs officers were being directed to withhold appraisement of such steel jacks imported from Canada. In accordance with this directive, the district director at Detroit withheld appraisement of the steel jacks here in issue.

On September 2, 1965, a supplementary "Withholding of Appraisement Notice" was issued by the Commissioner of Customs and published on September 9, 1965 (30 F.R. 11532). This notice referred to the notice published on May 8, 1965—when the then available information was insufficient to determine the appropriate basis of comparison with foreign market value—and stated that the information "now available" disclosed that "purchase price" was the appropriate basis of comparison for fair value purposes.

On December 29, 1965, the Acting Assistant Secretary of the Treasury made a tentative determination, published January 5, 1966 (31 F.R. 100), that the Hallman steel jacks "are being, or are likely to be" sold at less than fair value within the meaning of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)). He stated, as the reasons therefor, that the purchase price was compared with the home market price for fair value purposes and that it was less than the adjusted home market price for each size jack considered.

On May 17, 1966, the Assistant Secretary of the Treasury issued a "Determination of Sales at Less Than Fair Value," published May 24,

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[5] If the importer and exporter are dealing at arms' length, the "purchase price," as defined in section 203 of the Antidumping Act (19 U.S.C. 162), i.e., the price paid by the importer to the exporter, with certain specified adjustments, is utilized as the basis for comparison with foreign market value. If, however, the exporter and importer are related, then the "exporter's sales price" as defined in section 204 (19 U.S.C. 163) is utilized. The "exporter's sales price" is the price, with specified adjustments, at which the importer resells to unrelated purchasers. See Secretary of Treasury's report of February 1, 1957 on antidumping which is contained in hearings before the House Ways and Means Committee on H.R. 6006, 6007 and 5120, Amendments to the Antidumping Act of 1921, as Amended (85th Cong., 1st Sess., 1957) pp. 13–14, 21–22,

1966 (31 F.R. 7485), stating that he had determined, for the reasons set forth in the tentative determination, that steel jacks imported from Canada, manufactured by Hallman, were being, or were likely to be, sold at less than fair value within the meaning of section 201(a) (19 U.S.C. 160(a)).

Upon being informed of the Assistant Secretary's determination, the Tariff Commission published a "Notice of Investigation" on May 25, 1966 (31 F.R. 7534), advising that it had instituted an investigation under section 201(a) to determine whether an industry in the United States was being, or was likely to be injured, or prevented from being established by reason of the importation of such merchandise into the United States. On June 10, 1966, the Commission issued a notice that a public hearing would be held on July 6, 1966 (31 F.R. 8185).

Thereafter, in an opinion published on August 24, 1966 (31 F.R. 11197) the Tariff Commission (with two Commissioners dissenting) determined that an industry in the United States was likely to be injured by reason of the importation of the Hallman steel jacks from Canada, sold at less than fair value. In accordance with section 201(a) of the act (19 U.S.C. 160(a)), the Assistant Secretary of the Treasury issued a finding of dumping on September 1, 1966 with respect to such jacks, which was published on September 13, 1966 as T.D. 66-191 (31 F.R. 11974).

Upon publication of the dumping finding, the jacks were appraised by the Detroit district director with respect to their foreign market value and purchase price, as required by section 209 of the Antidumping Act (19 U.S.C. 168) [6] in order to determine the amount of special dumping duty that was to be levied, i.e., an amount equal to the difference between the two figures. Section 202(a) (19 U.S.C. 161(a)).[7]

[6] Section 209 (19 U.S.C. 168) provides as follows:

In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 160 of this title, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of constructed value to the contrary notwithstanding) and report to the collector the foreign market value or the constructed value, as the case may be, the purchase price, * * *.

[7] Section 202(a) (19 U.S.C. 161(a)) provides in relevant part:

(a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 160 of this title, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under said section has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price * * * is less than the foreign market value * * * there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

The purchase prices, which were ascertained by the district director pursuant to section 203 (19 U.S.C. 162), are not in issue. Rather, plaintiffs' primary challenge is to the director's determination of the foreign market value under sections 205 and 202(b) of the Antidumping Act (19 U.S.C. 164 and 161(b)).

In this connection, section 205 (19 U.S.C. 164) defines foreign market value as—

> * * * the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, * * *.

This statutory definition of foreign market value is modified in part by section 202(b) (19 U.S.C. 161(b)) which provides that—

> (b) In determining the foreign market value for the purposes of subsection (a) of this section, if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—
>
> (1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),
>
> (2) other differences in circumstances of sale, * * *
>
> * * * * * * *
>
> then due allowance shall be made therefor.

In applying the foregoing formula, the district director computed the foreign market values for the jacks on the basis of the Canadian list price including 11% sales tax, less 47% quantity discount, less a 1% cash discount, less an advertising and printing allowance of $0.08 Canadian dollars and then converted the result to U.S. dollars

using the quarterly rate of exchange in effect at the time of exportation.

Plaintiffs contend, however, that the foreign market values thus found by the district director are incorrect because he did not make an allowance, or made insufficient allowance, under section 202(b) (1) and (2) (19 U.S.C. 161(b) (1) and (2)) for "the difference between the Canadian home consumption price and the export price to the United States due to the difference in the wholesale quantities in which the merchandise was sold in the respective markets, and due to other differences in circumstances of sale" (br. p. 2).

If these allowances were made, plaintiffs allege, they would either lower the foreign market values to the same level as the purchase prices, thereby eliminating the dumping duties entirely, or at least reduce the foreign market values substantially so that the dumping margin (and the duties) would be reduced proportionately.

Plaintiffs also claim that under the customs regulations then in effect, the district director could not legally withhold appraisements of steel jacks entered prior to publication on September 9, 1965 of the supplementary "Withholding of Appraisement Notice," and that appraisement for dumping purposes of entries made prior to that date are invalid.

Finally, plaintiffs urge that the determination of the Assistant Secretary of the Treasury of sales at less than fair value is erroneous.

III

Turning now to the record, plaintiffs called three witnesses: Jacob C. Hallman, president since 1938 of Hallman; Kenneth H. Bottorff, owner of Bottorff; and Charles H. Spry, a Canadian chartered accountant and partner in a Canadian accounting firm. Defendant offered the testimony of John Kokos, a certified public accountant and partner in an Indiana public accounting firm.

The witness Hallman, who directs the operations of the company "in all regards," testified that during the period in question, his company manufactured three separate product lines—steel jacks, electric fencing and accessories, and pipe organs—but had no separate divisions and kept no separate books or records for each product; that 50 to 60 percent of its total sales of steel jacks were to Canadian customers, mostly jobbers, who got varying discounts off the price list depending upon the quantity purchased, which rarely exceeded 300 jacks per order; that about 40 percent of its jack sales were to Bottorff, its exclusive purchaser in the United States, which imported the merchandise for resale to wholesalers and jobbers; that Bottorff purchased in railway carload lots averaging about 2,700 to 3,000 jacks per load and in truck lots averaging about 1,200 to 1,300 jacks per

load; and that many more individual sales were made to Hallman's Canadian customers, because of the smaller quantities involved, than to Bottorff. The witness stated that it was probable that in 1965 and 1966 Hallman sold jacks to countries other than Canada and the United States but indicated that such sales amounted to "less than 10 percent."

Hallman also testified that the following expenses were incurred in his Canadian sales but not in his sales to Bottorff: Sales salaries and commissions, service and demonstration, advertising, truck expense and depreciation, auto expense and depreciation, and donations. He added that the following expenses were greater in the Canadian market than in the United States market: Warehousing of finished goods, traveling expenses, general selling expenses, interest and exchange, discounts allowed, management and office salaries, office expenses, telephone expenses, postage, depreciation of office furniture and general expenses.[8]

During the period in question, the witness Hallman concentrated on selling jacks while three of his four salesmen sold organs, and the fourth sold jacks and organs. Although records were not kept of the expenses incurred for each product, management and office personnel kept time sheets showing how much time was spent on each activity. The salesmen, however, did not keep records to the same extent.

At Hallman's request, its accountant, Spry,[9] prepared in October 1971 an analysis (exhibit 2) [10] comparing the "pricing policies and circumstances of sale relating to the prices charged to Canadian customers" with the prices charged to Bottorff in the United States for the sale of jacks during the period from January 1, 1965 to June 30, 1966. Through a series of calculations, described below, Spry allocated various overhead expenses, which he considered to be costs incurred "in connection with jack sales," between the Canadian and United States markets, and arrived at an overhead cost of $1.07 per unit for sales to Canadian customers and 14 cents per unit for sales to Bottorff. Plaintiffs claim that the resulting 93 cent differential should have been allowed as "other differences in circumstances of sale" under section 202(b)(2) of the Antidumping Act (19 U.S.C. 161(b)(2)) in computing foreign market value. Although this allowance of 93 cents would, according to plaintiffs' own calculations, still leave a differen-

[8] Bottorff testified that his company incurred the following expenses in connection with the resale of the Hallman jacks in the United States: Salaries and commissions, service and demonstration, advertising, truck expense and depreciation, automobile expense and depreciation, general selling expense, interest expense, office furniture depreciation, miscellaneous expenses and some donations; and that he ordered in large quantities, usually by the truck load, in order to get the most favorable transportation rates.

[9] Spry, whose firm has been auditor for Hallman since 1955, has personally been in charge of preparing the latter's financial statements since 1958.

[10] Exhibit 2 was received in evidence with the exception of the concluding paragraph.

tial ranging from one to 29 cents between the prices to the Canadian customers and to Bottorff, plaintiffs contend that this differential is justified under section 202(b)(1) (19 U.S.C. 161(b)(1)) because of the differences in the wholesale quantities sold in the Canadian and United States markets.

Considering exhibit 2 in greater detail, the first tabulation therein lists the number of jacks sold per month to "Canadian Customers" and to Bottorff from January 1, 1965 through June 30, 1966. These figures were based on invoice data obtained from Hallman's clerks which were tested for accuracy by random checking by Spry's staff. Spry stated (R. 104) that the results "were very reliable" and "we were able to reconcile the total value determined with the records of the company, by that I mean total sales." [11]

Exhibit 2 also lists, by size, the total number of jacks sold to Canadian customers and to Bottorff during the period in question, and states that there were 1,399 invoices to Canadian customers averaging 43 jacks per invoice, that only 153 of these sales were for more than 100 jacks, and that the largest Canadian sale was for 400 jacks. During the same period, according to Spry, there were only some 35 invoices made out to Bottorff, averaging 1,475 jacks per invoice.

The various selling, delivery, financial and administrative expenses incurred by Hallman for all of its manufacturing operations for 1965 are also shown in exhibit 2 in tabular form.[12]

This table includes, in addition, a percentage of each of the foregoing expenses that was believed to be "attributable to jacks." However, as previously noted, the actual costs incurred by the jack division could not be ascertained inasmuch as Hallman did not keep separate records of the expenses incurred by each of its product lines.[13] Therefore, Spry explained, in lieu of actual cost figures he utilized the percentage figures for the 1964 calendar year that were set forth in a

[11] How Spry was able to reconcile these invoices with the total sales is unclear, in view of the fact that Hallman also sold jacks to third countries during this period. See, for example, exhibit 3, comprising all Hallman's sales invoices for June, 1965, which included an invoice for a sale of 500 jacks (equal to approximately one-quarter of jack sales to Canadian customers that month) to a company in England.

[12] The expenses thus shown are: Sales salaries and commissions, traveling expenses, service and demonstration, advertising, truck expenses, truck depreciation, general selling expenses, interest and exchange, discounts allowed, management and office salaries, office expenses, telephone, postage, automobile expenses, donations, automobile depreciation, office furniture depreciation and general expenses.

[13] Hallman only kept records of the total overhead costs of its entire manufacturing output. Thus, the annual certified statements of 1964, 1965 and 1966 (exhibits A; 5; and B), which Spry prepared for Hallman's shareholders, list the "Commercial" expenses incurred for all of its business activities under three categories: "Selling" (sales salaries and commissions, traveling, service installation and demonstrations, advertising, truck expense, truck depreciation and general selling expenses); "Financial" (interest and exchange, discounts allowed and allowance for doubtful amounts); and "General and administrative" (management and office salaries, office expenses, telephone, postage, automobile expenses and depreciation, donations, depreciation of office furniture and equipment and general expenses).

"statement of income" for "management use only," which statement was prepared by his firm for Hallman in order to enable the latter to determine whether or not to discontinue the manufacture of organs. More particularly, this statement contained a schedule allocating a percentage of each category of "commercial" or overhead expenses to each of Hallman's three product lines. These percentage allocations were not recorded in the books or taken from company records, but were based solely on management estimates which were never checked for reliability or verified independently by Spry's firm.

In turn, Spry used these estimated 1964 percentage allocations in preparing the analysis of 1965 overhead expenses because "they were the only figures available to us" (R. 109). He did not question their accuracy on the stated ground (R. 110) that—

> * * * they were given to us by management and with our knowledge of the business they were reasonable allocations. We had no reason to suggest that they should not be used because they were unreasonable.

In this connection, he added that the allocations were within "the zone of reasonableness" (R. 110).[14]

The next tabulation shown in exhibit 2 allocates the estimated 1965 overhead expenses for jacks between Canadian customers and Bottorff "on the most reasonable basis in each case." The first item listed, namely, "Finished goods warehousing," was determined on the basis of the space allocated for storing finished jacks, while the other expense allocations[15] were based on "management representation to us which appeared reasonable to us" (R. 112).[16]

This "reasonable" method resulted in the following: Of the total estimated jack overhead expenses of $42,683 for 1965, $4,335—or just over 10% of this total—was allocated to the expenses attributable to the export sales to the United States in 1965 of 30,699 units, while the balance—$38,348—was allocated to the expenses attributable to the sales in Canada in 1965 of 35,804 units.

Dividing the expenses thus allocated to the Canadian and United States markets by the number of units sold in each, Spry arrived at the

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[14] The "zone" was apparently quite elastic inasmuch as Spry testified that he would have, for example, accepted an estimate of 40 percent instead of the 30 percent allocated to the jack division in 1964 for "management and office salaries"; indeed, he testified that he would also have accepted a figure that was under 30 percent.

[15] See note 12 for the list of itemized expenses.

[16] Spry described the procedure used to allocate expenses between the two markets thusly (R. 113–4):

> For example, we would have the problem of allocating travel expense, $1,993. My question to Mr. Hallman probably would go something like this: "To what extent was traveling involved with your business with Mr. Bottorff? Did you go over to the States? What travel would you do?" And then in response to his answer this allocation would be determined. It is not a mathematically precise determination, your Honor. It is a reasonable estimate made by management which appeared reasonable to us with our long knowledge of the nature of the business.

aforementioned "cost per unit" of $1.07 for sales in Canada and of 14 cents for sales in the United States to Bottorff, resulting in an "additional cost per Canadian unit" of 93 cents (exhibit 2, p. 3).

The next series of calculations contained in exhibit 2 work toward an adjusted sales price, that is, a lower foreign market value for each size jack which was sold to Canadian customers during the period from January 1, 1965 to June 30, 1966. This was done by deducting from the list price (exhibit 1) the 47% quantity discount allowed on sales of 100 or more units, the 11% Canadian sales tax and the 93 cent differential in the overhead expenses for 1965, and then converting the result to United States currency for each of the four sizes of jacks involved.[17] The adjusted figures were worked out separately for each quarter in 1965 and the first two quarters in 1966 (because official currency conversion rates varied in each quarter) and were then compared with the sales prices to Bottorff.

However, as previously noted, even with these adjustments, the prices to Bottorff were lower than those to Canadian customers by amounts ranging in the six quarters from one to 29 cents per unit. In Spry's opinion, the reason for these remaining price differentials was that (R. 119–20):

> The 47 percent discount previously referred to was granted on shipments of 100 units or more. And when one considers that the shipments to Bottorff were in the approximation of 1,400, 1,300 units per invoice, then the additional allowance for that quantity ordered is certainly, in my opinion, sufficient to absorb the variance of 1 to 29 cents per unit.

When questioned as to the methods employed in preparing exhibit 2, Spry agreed that the overhead expenses did not remain constant from year to year; that Hallman's relocation of part of its manufacturing plant in 1965 from Waterloo to Kitchener, Ontario would have affected some of its operations and it was a "possibility" that it affected some of the percentages used; that no attempt was made to allocate expenses to third country sales (which he stated did not exceed 2,000 jacks during this period); that the unit costs of $1.07 and 14 cents for the Canadian and United States markets constituted an "average unit base" without taking into account that some of the units (four different sizes of jacks, as noted before, are involved) may have had higher costs than others; and that he could have obtained a more accurate estimate of the expense allocations between the two markets for 1965 and 1966 if he had used the actual expenses incurred. How-

[17] The differential of 93 cents determined for the 12 months of 1965 was applied to the entire 18-month period ending June 1966 because it was the only information available (R. 142). Of the invoices involved herein, 22 cover merchandise ordered and exported during 1965, and 11 cover merchandise ordered an exported in 1966.

ever, he observed, "[t]o certify to the correct allocation of expenses in this company would be almost an impossible job" (R. 124).

Spry explained that all overhead expenses were included in calculating the costs incurred in connection with jack sales in each market because (R. 144–5):

> [e]very expense that the company has is related to earning its profits. * * * I believe in the final disposition of the jack an expense is a part of the process whether it is selling the jack or whether it is typing the invoice. They are all expenses relative to the business.[18]

IV

Since value determinations made pursuant to the Antidumping Act are presumed by statute to be correct (see section 210 (19 U.S.C. 169 and 28 U.S.C. 2635)), plaintiffs must prove that the district director erred in determining the adjusted foreign market values and then establish that they are entitled to the additional allowance claimed under section 202(b) (19 U.S.C. 161(b)). See e.g., *United States* v. *Fisher Scientific Co.*, 44 CCPA 122, 124, C.A.D. 648 (1957); *Brooks Paper Company* v. *United States*, 40 CCPA 38, 41, C.A.D. 495 (1952); *James C. Goff Company* v. *United States*, 58 CCPA 147, C.A.D. 1019, 441 F. 2d 671 (1971).

In light of these considerations, the primary question is whether plaintiffs have established (1) that an additional 93 cents should have been allowed in computing foreign market value by reason of other differences in circumstances of sale (section 202(b)(2) (19 U.S.C. 161(b)(2)); and (2) that the remaining price spread ranging from 1 to 29 cents between the Canadian sales prices (as adjusted by Spry) and Bottorff's statutory purchase prices should have been allowed because of the differences in wholesale quantities in which the merchandise was purchased in the Canadian and United States markets (section 202(b)(1) (19 U.S.C. 161(b)(1)). Plaintiffs also urge that, irrespective of any allowance for differences in circumstances of sale, Bottorff purchased in sufficiently large quantities, as compared to the quantities purchased by Canadian customers, to justify the entire price differential between the two markets.

With specific reference to plaintiffs' first claim, namely their entitlement to the allowance, it must be borne in mind that plaintiffs

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[18] Defendant's witness, Kokos, was of the opinion that (1) Spry should not have thrown all the general administrative and financial expenses into one category; and (2) should not have distributed them on the basis of selling expenses. He stated that use of 1965 and 1966 figures rather than 1964 figures would have provided a more accurate determination of the percentage allocations in 1965 and 1966. As to exhibit 2, he believed that the allocations were arbitrary since they were management estimates which were not supported by detailed evidence or data. He conceded, however, that he himself, on many occasions, had had to make arbitrary adjustments where no other alternative was available. Further, he agreed that the nature of certain expenses as between various customers might differ due to differences in circumstances of sale.

bear a dual burden. First, they must prove the existence of other differences in "circumstances of sale" within the meaning of the statute—and then prove their monetary value. For the reasons that follow, it must be concluded that plaintiffs have failed in their proofs on both counts.

The term "differences in circumstances of sale" was added in 1958 to section 202(b) (19 U.S.C. 161(b)) by Public Law 85–630 (72 Stat. 583–4), which amended the Antidumping Act of 1921. This was done in order to bring the definition of foreign market value "generally into line with the definition of fair value" [19] as contained in section 14.7(b) of the Customs Regulations, as amended April 8, 1955 (T.D. 53773, p. 96). This section provided in pertinent part:

> (1) *Quantities and circumstances of sale.*—In comparing the purchase price or exporter's sales price, as the case may be, with the sales on which a determination of fair value is to be based, a reasonable allowance may be made for any differences in quantities and circumstances of sale.

Both the Senate and House reports accompanying H.R. 6006, subsequently enacted as Public Law 85–630, included the following explanation: [20]

> *Differences due to "other circumstances of sale"*
>
> Under the bill as reported, provision is made (sec. 202(b)(2) and (c)(2)) for consideration of "other differences in circumstances of sale" in addition to quantity differentials. This is designed to facilitate efficient and fair comparison between foreign market value and price to the United States market. Examples would be differences in terms of sale, credit terms, and advertising and selling costs.

The Treasury Department, which, as previously pointed out (note 19), had submitted an Explanatory Memorandum on H.R. 6006 to the Senate Finance Committee, described this amendment as follows (Senate Hearings, p. 19):

> (3) A further change in section 202(b) requires that allowance be made for differences in circumstances of sale in determining foreign market value. An example would be the payment of advertising expenses in the United States by a manufacturer attempting to introduce a product into the United States market, whereas in the home market the advertising expenses are borne by the distributors. Under the present law this would not constitute any basis for the assessment of dumping duties. The amendment

[19] See Treasury Department Explanatory Memorandum, *Hearings before the Senate Committee on Finance on H.R. 6006 to Amend Certain Provisions of the Antidumping Act of 1921* (85th Cong., 2d Sess., 1958) p. 19 (hereafter referred to as "Senate Hearings"). It is to be noted that the term "fair value" is not defined anywhere in the Antidumping Act.

[20] S. Rep. No. 1619 (85th Cong., 2d Sess., 1958), 2 U.S. Cong. & Admin. News (1958) p. 3504; H. Rep. No. 1261 (85th Cong., 1st Sess., 1957) p. 7.

would require that the amounts expended by the manufacturer for advertising in connection with his sales to the United States be added to his home market price for the purpose of determining foreign market value; if as a result the foreign market value is higher than the price to the United States and a finding of dumping has been made, dumping duties would be assessed in an amount equal to the difference. Conversely, if the manufacturer paid advertising costs in the home market but not in the United States, the advertising expenses would be deducted from the home market price in determining foreign market value.

Other circumstances of sale would be selling costs, restrictions affecting value, commissions, differences in inland freight costs, and other items affecting the price of the merchandise in one market as compared with another.

Obviously, the term "differences in circumstances of sale" is not subject to precise definition, and there is no hard and fast rule for determining what such differences will be in a given case. It is clear, however, from the foregoing statements that this amendment was designed and intended to allow an adjustment in calculating foreign market value only for those factors and conditions which have a reasonably direct bearing on, or relationship to, the sales under consideration. Thus, although the cost factors might vary considerably in each case, depending upon the kind of merchandise involved, the sales and marketing practices, and other conditions, all would have one common element—a reasonably direct effect upon the sales under scrutiny.

Therefore, the adjustment allowed under section 202(b)(2) (19 U.S.C. 161(b)(2)) does not permit, as plaintiffs have done, the indiscriminate lumping together of all overhead expenses such as administrative, general financial management and selling expenses into a stewpot labeled "differences in circumstances of sale." Rather, it must be shown that each claimed expense had a reasonably direct effect upon the sales in the market under consideration.

Plaintiffs have manifestly failed to establish such relationship, relying instead upon the unsupported assertion that a portion of all overhead expenses, even administrative and financial, represent costs incurred "in connection with jack sales to Canadian customers that are not applicable to sales to Bottorf [sic]" (exhibit 2, p. 3).[21] Absent a

[21] When questioned as to his reasons for listing all overhead expenses as costs incurred in connection with jack sales, Spry observed (R. 148) that—

[t]he ultimate end of J. C. Hallman is to sell a product. In that interpretation all expenses can be, I suppose, referred to selling the product.

However, Spry readily conceded that not all of the overhead expenses listed in exhibit 2 are considered selling expenses. R. 131–2. Thus, when preparing the *certified* annual financial statements for 1964 and 1965 for Hallman's shareholders (exhibits A and 5) Spry did not lump together all these overhead expenses as selling expenses; rather he listed them separately under the headings "financial," "general and administrative" and "selling"—which categorizations, he agreed, were made on the basis of general accounting principles. See R. 131. In other words, in preparing a certified report for Hallman's shareholders, Spry used an entirely different "accounting" method from that which he employed in the present case.

showing that the claimed items have a reasonably direct bearing on sales in the Canadian market not incurred in sales to the United States, no allowance can be made for them under section 202(b)(2) (19 U.S.C. 161(b)(2)).[22]

However, even if plaintiffs had shown that they were entitled to an allowance for some of these overhead expense items, they have nonetheless failed *in toto* to establish by substantial competent evidence the cost of these items for the period involved, thus foreclosing the court from finding foreign market values other than those found by the district director.

The proofs required to establish a value under the Antidumping Act must meet the same standards of competency and substantiality required in all cases involving valuation of merchandise for customs purposes. See section 210 of the Antidumping Act (19 U.S.C. 169). And on this aspect, a basic concept of all value determinations by the court is that they must be based upon proof of *actual* costs or prices—*not* estimates, approximations or averages. *Hamers Company* v. *United States*, 51 Cust. Ct. 407, 413, R.D. 10595 (1963). Thus, use of percentages in calculating expenses or profits will be rejected if they are not based upon *actual amounts* of expenses incurred or profits added. *Gerhard & Hey Co., Inc.* v. *United States*, 30 Cust. Ct. 580, 587–8, A.R.D. 13 (1953). Also, evidence of the *average* prices at which merchandise was sold may not be used as a basis for determining its statutory value. *United States* v. *International Graphite & Electrode Corp.*, 25 CCPA 74, 86–7, T.D. 49066 (1937).

Moreover, where a party is attempting to establish the general expenses and profits of one segment of a company's business activities, the evidence offered must bear a direct relationship to the expenses and profits actually derived from that phase of the company's operations and not be based upon an arbitrary apportionment. *Judson Sheldon International Corporation* v. *United States*, 51 Cust. Ct. 374, R.D. 10586 (1963), *aff'd* 54 Cust. Ct. 773, A.R.D. 183 (1965).[23]

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[22] Plaintiff's reliance upon *James C. Goff Co.* v. *United States, supra*, 58 CCPA 147, is misplaced. In that case, appellants had claimed that the appraisers erred in determining the foreign market value of the imported merchandise by failing to make sufficient allowances under section 202(b)(2) for certain expenses incurred in home market sales which allegedly were not present in sales to the United States. The appeals court affirmed the holdings of the trial judge and the Appellate Term of this court that plaintiffs had failed to establish through a competent qualified witness what the claimed costs actually were. At no time did the court reach or consider the question whether these cost items, if proved, were "differences in circumstances of sale" within the meaning of the statute.

[23] One of the issues involved in *Judson Sheldon*, in which plaintiff was claiming that the invoice prices of the merchandise represented the correct United States values, was the sufficiency of proof offered by plaintiff to establish the items of profit and general expenses which, under the statute, must be deducted to arrive at net United States values. In this connection, the trial court stated as follows (51 Cust. Ct. at 379) in language cited approvingly by the Appellate Term (54 Cust. Ct. at 777–8):

(Continued)

In *Hill Brown Corp.* v. *United States*, 54 CCPA 99, C.A.D. 917 (1967), appellant was engaged in three separate businesses, one of which involved the imported merchandise (decorative linens) for which it was claiming United States value as the proper basis of appraisement. In an attempt to establish the general expenses and profits to be deducted from the domestic price, appellant, which kept no separate records of the expenses and profits of its three businesses, determined the amount of overhead expenses for the linen importations by finding the ratio between the total linen sales and the total sales of all three businesses and applying that percentage to the total overhead expenses for all three operations. Appellant sought to justify this procedure as a "reasonable" way to apportion costs among a company's business operations to obtain "reasonable" allowances for the general expenses of the linen business.

The appeals court in *Hill Brown* rejected this argument and affirmed the Appellate Term's holding that appellant had not proven the general expenses and profits chargeable to the imported merchandise.[24] To the same effect see also *National Carloading Corp* v. *United States*, 60 CPA 54, C.A.D. 1080, 469 F. 2d 1398 (1972).

(Continued)

> • • • The court is not satisfied that the evidence as to "profit" and "general expenses" is sufficient to support plaintiff's claimed values. According to the evidence, no separate books were kept by the importer covering the profit and general expense items as applied to the imported merchandise alone. The testimony indicates that the only records kept by the company show entries of sales of all types of merchandise by the company; that, in order to determine the profit and general expenses to be assigned to the involved merchandise, it was necessary to assume that the same amount of profit proportionately was derived from the sale of the films and condensers as was derived from the sales of other merchandise; and that the general expenses relating to the handling of the condensers and films were exactly the same in proportion as the general expenses incurred in handling the other merchandise sold by the importer.
>
> • • • Plaintiff attempts to establish the general expenses for the involved merchandise by applying to such merchandise a percentage in relation to the percentage for general expenses covering all sales of merchandise made by plaintiff. This is unsatisfactory proof, since it may well be that it cost more to handle other types of merchandise, or less, as the case may be, than the outlay incurred for handling the imported merchandise. It is also very probable that the amount or margin of profit differs as applied to the various types of merchandise involved. The court is definitely of the opinion that the evidence offered does not meet the burden resting upon the plaintiff to establish the amount of profit and general expenses properly deductible for the ascertainment of the value of the involved merchandise.

[24] The court also cited (54 CCPA at 102–3) the following statement from the Appellate Term's principal opinion (55 Cust. Ct. 771, 776, A.R.D. 198 (1965)):

> • • • In computing the general expenses and, hence, profit, to be deducted from the domestic selling price of the merchandise, plaintiff has fallen into error. Its general expenses bear no relationship to the actual expenses incurred in its linen fabrics operations, which is the only phase of its business operations with which the court is concerned. The practice of apportioning operating expenses equally among all phases of a company's business operations, in lieu of the actual operating expenses incurred by a particular phase of business being inquired into, has not met with judicial approval. *Judson Sheldon International Corporation* v. *United States*, 51 Cust. Ct. 374, Reap. Dec. 10586, affirmed February 24, 1965, 54 Cust. Ct. 773, A.R.D. 183. Therefore, we agree fully with the trial court that "The record is barren of any evidence to show that in the processing and marketing of the merchandise at bar, operating costs were proportionately the same as the operating costs for conducting the other phases of plaintiff's business, however that proportion might be determined."

The evidentiary requirements spelled out in the foregoing cases for establishing the various statutory values are equally applicable here in establishing the claimed foreign market values for the imported jacks. However, the testimonial and documentary evidence adduced in this case, as previously recounted in detail, falls far short of meeting those standards. In no sense does this evidence reflect the actual expenses incurred by the jack division.[25]

From what has been said, the court must regard as totally without merit plaintiffs' assertion that, by virtue of Customs Regulations section 14.7 defining fair value—which is not here in issue in determining foreign market value—they need only establish their claim under section 202(b)(2) (19 U.S.C. 161(b)(2)) by "reasonable evidence" (br. p. 27) and that they have sustained their burden by proving a "reasonable amount" (br. p. 23) for difference in circumstances of sale. *Hill Brown Corp* v. *United States*, *supra*, 54 CCPA 99; *Kobe Import Co.* v. *United States*, 43 CCPA 136, C.A.D. 620 (1956); *Brooks Paper Company* v. *United States*, *supra*, 40 CCPA 38.[26]

[25] The sole exception is the "Finished goods warehousing" expense which was based upon actual use of inventory space in 1965. Whether these figures also hold true for the first six months in 1966 is not indicated.

[26] In this connection, both parties and amicus curiae rely upon the *"fair value"* definition in section 14.7(b) of the Customs Regulations. This section, as approved on April 29, 1960 and published on May 6, 1960 (25 F.R. 3948) as TD 55118, sets forth the differences in circumstances of sale for which allowances could be made in the section determining *"fair value."* To the extent relevant here, the section provided as follows in language which remained unchanged through the period in issue (see T.D. 56315, 29 F.R. 16320 (1964)):

> (2) *Circumstances of sale.*—In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.
>
> Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.
>
> * * * * * * *

It is also noted that plaintiffs rely almost exclusively upon the testimony of Spry and upon exhibit 2, which was prepared by him, although he had no personal knowledge of the claimed overhead expenses and had to rely upon what Hallman management told him. It does not lend credence to plaintiffs' case that the witness Hallman, who supervised all of the company's activities and presumably knew more about its financial affairs than anyone else, was unable to testify as to the basis for allocating the various expenses among his company's production lines other than that they "tried to allocate what our company was doing and what the expense should be allocated to" (R. 62).

The court is compelled to conclude that the logistics employed by plaintiffs in constructing what can only be characterized as a bootstrap operation is palpably insufficient to establish their claim to an adjustment of 93 cents, or any other amount, for differences in circumstances of sale.[27]

As mentioned previously, plaintiffs further contend that irrespective of any allowance for differences in circumstances of sale, Bottorff purchased in sufficiently large quantities, as compared to the quantities purchased by Canadian customers, to justify the entire price differential between the two markets. But this contention must also fall. Section 202(b)(1) (19 U.S.C. 161(b)(1)) provides, as noted before, that a due allowance shall be made in determining foreign market value if it is established—

> * * * that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—
>
> (1) the fact that the wholesale quantities, in which * * * [the] merchandise is sold * * * to the United States * * * are * * * greater than the wholesale quantities in which such * * * merchandise is sold * * * in the * * * country of exportation * * *

On this phase, the record discloses that a 47% discount from the Hallman price list was offered to all purchasers of 100 or more units, and that this discount was allowed by the district director in determining the foreign market values. However, there is not a scintilla of evidence in the record (Spry's speculation to the contrary notwithstanding) that Hallman offered additional discounts for pur-

[27] Defendant's brief stresses certain discrepancies between the data contained in the invoices covered by the entries in issue and the figures set out in exhibit 2 relative to the monthly sales of jacks for the period in question. In view of the court's findings, it is unnecessary to deal with this aspect of plaintiffs' proofs.

chase of larger quantities or that the lower prices charged Bottorff were "due to" his volume purchases.

It is also worthy of note on this aspect that plaintiffs relied solely on the conjectures of a witness who was not familiar with the price structure of Hallman's merchandise, whereas the witness Hallman, the company's president, who would be most knowledgeable in this area, was entirely silent on this question. Indeed, upon reflecting on the trial proceedings, it would appear that plaintiffs' counsel carefully refrained from questioning Hallman with respect to his company's discount policy.

V

Section 201(b) of the Antidumping Act (19 U.S.C. 160(b)) provides that whenever the Secretary of the Treasury has reason to believe, in the case of any imported merchandise, that the purchase price or exporter's sales price is less, or likely to be less, than the foreign market value, he shall—

> * * * forthwith publish notice of that fact in the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him * * *.

Plaintiffs contend that sections 14.6(e) and 14.9(a) of the Customs Regulations (19 CFR 14.6(e) and 14.9(a) (1965 ed.)) then in effect (which were promulgated pursuant to section 201(b) (19 U.S.C. 160 (b)) precluded appraising officers from withholding appraisements of the steel jack entries until the publication on September 9, 1965 of the supplementary withholding of appraisement notice advising that purchase price was the appropriate basis of comparison for fair value purposes.

These sections of the regulations provide, in pertinent part, as follows:

> 14.6(e) If the Commissioner determines * * * that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value * * * he shall publish notice of that fact in the Federal Register, furnishing an adequate description of the merchandise, the name of each country of exportation, and the date of the receipt of the information in proper form, and *shall advise all appraisers of his action. This notice may be referred to as the "Withholding of Appraisement Notice."* * * * The notice shall * * * specify whether the appropriate basis of comparison for fair value purposes is purchase price or exporter's sales price *if sufficient information is available to so state;* otherwise a supplementary notice will be published in the Federal Register as soon as possible which will

specify which of such prices is the appropriate basis of comparison for fair value purposes. Upon receipt of such advice, the appraisers shall proceed to withhold appraisement in accordance with the pertinent provisions of section 14.9 [Emphasis added.]

14.9(a) Upon receipt of advice from the Commissioner of Customs pursuant to section 14.6(e), if the Commissioner's "Withholding of Appraisement Notice" shall specify that the proper basis of comparison for fair value purposes is exporter's sales price *or if that notice does not specify the appropriate basis of comparison for fair value purposes, each appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, on any date after the 120th day before the question of dumping was raised by or presented to the Secretary of the Treasury or his delegate.* If the Commissioner's "Withholding of Appraisement Notice," including any supplementary notice, shall specify that the proper basis of comparison for fair value purposes is purchase price, the appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisement Notice." * * * [Emphasis added.]

Construing these sections in *pari materia*, the only reasonable interpretation to be placed upon them is that the appraisers were directed to withhold appraisements upon receipt of the original "Withholding of Appraisement Notice," and that the phrase "Upon receipt of such advice" in section 14.6(e), like the phrase "Upon receipt of advice" in section 14.9(a), refers to the original, not to the supplementary, notice. Any other construction would render superfluous and meaningless the phrases "and shall advise all appraisers of his action" in section 14.6(e) and "or if that notice does not specify the appropriate basis of comparison for fair value purposes" in section 14.9(a).

This interpretation also comports with the provisions contained in sections 201(b) and 202(a) of the Antidumping Act (19 U.S.C. 160(b) and 161(a)), *supra*.[28]

It is to be added that the question of dumping was presented to the Secretary by means of information received on April 13, 1965. See 31 F.R. 100. This being the case, appraisements could properly be withheld as to merchandise entered after December 13, 1964 (the 120th day before the question was raised). Since all the entries involved here were made after that date, it follows that all the merchandise in question was subject to appraisement for dumping duty purposes.

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[28] Whether the provision in section 201(b) (19 U.S.C. 160(b)) that the Secretary "shall authorize" the withholding of appraisement reports is mandatory or only "permissive," as defendant asserts, is not before the court for consideration. On this point, however, see S. Rep. No. 1619, *supra*, note 20, at 3501.

VI

Finally, plaintiffs assert that "[t]he failure of the Treasury Department to adjust the foreign market value in accordance with [section 202 (19 U.S.C. 161)] renders his determination of sales at less than fair value invalid" (br. p. 37).

In so arguing, plaintiffs appear to have confused the concept of sales at less than fair value with foreign market value. Section 201 of the Antidumping Act (19 U.S.C. 160) provides for assessment of dumping duties whenever (a) the Secretary of the Treasury determines that a *class or kind* of foreign merchandise is being, or is likely to be sold, in the United States at a price less than its fair value and (b) the Tariff Commission determines that an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of the importation of such merchandise into this country. (For the purposes of the Act "fair value," as previously discussed, is defined in section 14.7 of the Customs Regulations (19 CFR 14.7).) Thus, the determinations of the Secretary and the Tariff Commission are concerned with the *class or kind* of merchandise involved, not a particular importation.

The dumping duties, however, are measured by the difference between (1) the "purchase price" (or "exporter's sales price") of the particular importation (as defined in sections 203 and 204 (19 U.S.C. 162 and 163)) and (2) the "foreign market value" (as defined in section 205 (19 U.S.C. 164) with the adjustments provided for in section 202(b) (19 U.S.C. 161(b)). Accordingly, whether or not the district director erred in determining the foreign market value of any of the importations involved here by not making sufficient allowance for the differences in the usual wholesale quantities or other differences in circumstances of sale under section 202(b) (19 U.S.C. 161(b)), has no bearing on the Secretary's determination under section 201 (19 U.S.C. 160) as to sales of the *class or kind* of merchandise at less than fair value and a finding of error in foreign market value can in no wise affect his determination therein.

Even more important, it is settled that in enacting the Antidumping Act, Congress delegated to the Secretary broad discretionary authority. And in this respect, the court is limited to determining whether the Secretary or his delegate acted within the scope of his delegated authority and correctly construed the pertinent statutory language. The court may not go further and weigh the evidence or review the conclusions the Secretary drew therefrom. Thus, in *Kleberg & Co. (Inc.)* v. *United States*, 21 CCPA 110, 115, T.D. 46446 (1933), our court of appeals stated:

> It is equally well established by the authorities that if the Secretary of the Treasury has proceeded in the method prescribed

by the Congress, we may not judicially inquire into the correctness of his conclusions. The constitutionality of the law under which he proceeds having been once determined, then the judicial power extends only to a correction of his failure to proceed according to and within the law. *United States* v. *Sears, Roebuck & Co., supra; Clarke* v. *United States*, 17 CCPA (Customs) 420, T.D. 43866; *United States* v. *Tower & Sons*, 14 Ct. Cust. Appls. 421, T.D. 42058; *United States* v. *Central Vermont Railway Co.*, 17 CCPA (Customs) 166, T.D. 43474.

This being the state of the law, we are not at liberty here to go into an investigation as to whether the facts shown on the trial below justified the issuance of the order complained of. * * *

See also *Imbert Imports, Inc.* v. *United States*, 60 CCPA 123, C.A.D. 1094, 475 F. 2d 1189 (1973); *City Lumber Co.* v. *United States*, 59 CCPA 89, C.A.D. 1045, 457 F. 2d 991 (1972); *United States* v. *Elof Hansson, Inc.*, 48 CCPA 91, C.A.D. 771, 296 F. 2d 779 (1960), *cert. den.* 368 U.S. 899 (1961).

VII

In summary, plaintiffs have failed to establish (i) that the foreign market values found by the district director for the importations herein are erroneous; (ii) that the merchandise entered prior to September 9, 1965 was not subject to dumping appraisement; or (iii) that the Assistant Secretary of the Treasury erred in finding sales at less than fair value.

Judgment will be entered accordingly.

(C.D. 4545)

KEYSTONE CASING SUPPLY, INC. *v.* UNITED STATES

Netting, in the piece

The imported merchandise consists of fabric imported in 50-yard rolls from which random small pieces of various lengths are cut for use in wrapping rolled roast beef and salami type meat products. Defendant does not purport to dispute that the imported fabric is netting made on a knitting machine. The netting is unquestionably "in the piece."

Classification in this case involves the question of how the imported merchandise, which defendant's pleadings admit consists of textile fabrics, should be classified in terms of superior headings in schedule 3, part 4, subpart B, for netting, in the piece, made on a knitting machine, in competition with the superior heading in schedule 3, part 7, subpart B, for articles not specially provided for, of textile materials.

Held. Since schedule 3, part 7, subpart B, only "covers articles, of textile materials, not covered elsewhere in the tariff schedules,"

and the rolls of fabric provenly consist of netting, in the piece, made on a knitting machine, the said rolls consist of fabric, of textile material, specially provided for as netting, in the piece, made on a knitting machine, dutiable under TSUS item 352.80, and should not have been classified as though they were rolls, not specially provided for, of textile materials, dutiable under TSUS item 386.05.

Court Nos. 67/34502, etc.

Port of Pittsburgh

[Judgment for plaintiff.]

(Decided May 30, 1974)

Allerton deC. Tompkins; Lloyd E. Engle, Jr., associate counsel; for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Steven P. Florsheim* and *Saul Davis*, trial attorneys), for the defendant.

LANDIS, Judge: These six cases, consolidated for trial, involve 50-yard rolls of tubular textile fabric imported from Italy [1] which fabric after importation was cut into small random pieces and used to wrap rolled roast beef and salami type meat products.

The merchandise was classified by customs under TSUS (Tariff Schedules of the United States) item 386.05 as articles not specially provided for, of textile materials.[2]

Plaintiff in its complaint alleges the merchandise should have been classified under TSUS item 352.80 as netting, in the piece, made on a knitting machine.[3]

Defendant has filed answer admitting that the rolls of the fabric are netting, but denying that they are in the piece made on a knitting machine.

Schedule 3, part 4 and part 7, provide for the above classifications in pertinent context as follows:

Classified:

SCHEDULE 3. – TEXTILE FIBERS AND TEXTILE PRODUCTS

Part 7. – Miscellaneous Textile Products; Rags and Scrap Cordage

Subpart B. – Textile Articles Not Specially Provided For

[1] Exhibits 1 through 30 are representative fabric samples cut from the imported rolls of the kind used with cooked meats, i.e., rolled roast beef. Exhibit 32 is a list of the contested entries involving fabric used to wrap salami type meats.

[2] Dutiable at 50 per centum ad valorem as net articles, whether or not ornamented.

[3] Dutiable at 24 per centum ad valorem.

Subpart B headnote:

1. This subpart covers articles, of textile materials, not covered elsewhere in the tariff schedules.

	Articles not specially provided for, of textile materials:	
386.05	Lace or net articles, whether or not ornamented, and other articles ornamented ----------	50% ad val.

Claimed:

SCHEDULE 3. – TEXTILE FIBERS AND TEXTILE PRODUCTS

Part 4. – Fabrics of Special Construction or For Special Purposes; Articles of Wadding or Felt; Fish Nets; Machine Clothing

Subpart B. – Lace, Netting, and Ornamented Fabrics

Subpart B headnotes:

1. This subpart covers only (a) textile fabrics in the piece, of any width, including edgings, insertings, galloons, flouncings, and all-overs, and (b) textile motifs. Fabrics described in part 3, part 4A, or part 4C of this schedule are covered by item 333.50 if ornamented.

* * * * * * *

	Netting, in the piece, made on a lace, net, or knitting machine, whether or not ornamented:	
	* * * * * * *	
	Not ornamented:	
* * *	Quilling ----------	* * *
	Other:	
352.40	Made on a Mechlin (or Malines) net machine----	* * *
352.50	Made on a bobbinet machine, of cotton, and having not over 224 holes per square inch ----------	* * *
352.80	Other ----------	24% ad val.

At the trial, two witnesses testified for plaintiff. There were no witnesses for defendant.[4] The material facts testified to of record and next summarized are not in dispute.

The fabric imported in rolls of 50 yards is a cotton elastic tubular netting made on a knitting machine other than a Mechlin or bobbinet machine. Some of the fabric was produced in tubular form on a double needle bar knitting machine. Some was produced on a single needle bar knitting machine and made into tubular form by folding the fabric and closing it on another machine. The rolls of fabric are cut into random lengths after importation but show no lines of demarcation for cutting. The fabric is sold and advertised as "Jet-Net" or "Net-Tye."

At the times of importation, the fabric was sold exclusively to the industry engaged in the business of selling meat products. The importations include a fabric made to withstand the heat of an oven which is used to wrap rolled roast beef products that are ordinarily hand-tied with a cord or string. Also included is fabric used to wrap salami type meat products. There is nothing that physically identifies the fabric rolls as a meat wrap and one witness opined that it could be used to wrap cheese or used in other applications "depending upon the imagination of the user." Users cut the fabric from the rolls in random lengths determined by the size of the meat product it is to wrap. There are machines available to facilitate stuffing the meat into the tubular fabric.

Defendant does not purport to dispute that the testimony establishes that the imported fabric is netting made on a knitting machine. The netting [5] is also unquestionably "in the piece."

Both sides have filed briefs.[6] Plaintiff assesses that it has factually proved that the imported rolls of textile fabric consist of netting, in the piece, made on a knitting machine, dutiable under TSUS item 352.80. Defendant, relying on the factual testimony that the imported fabric was exclusively used to wrap meat products, contends that the fabric cannot be classified as netting, in the piece, because in the manner of its use the fabric is not, in the tariff sense, a fabric "material" but rather a net "article," dutiable under TSUS item 386.05.

The difficulty with defendant's contention is that its argument of "material" versus "article" [7] is not germane to the issue raised by the competing superior tariff headings in this case. Classification in this

[4] Defendant introduced three documents (correspondence between the attorney for plaintiff and the Bureau of Customs) into evidence (exhibits A, B, and C).

[5] "Net sometimes used as a synonym for netting, is, correctly, a particular length of netting." Summary of Tariff Information (1929), schedule 14, page 2026; Summary of Tariff Information (1948), volume 15, part 5, page 18. Cf. *R. P. Oldham Company* v. *United States*, 41 CCPA 53, C.A.D. 528 (1953).

[6] Plaintiff also filed a reply brief and defendant a surreply brief.

[7] Cf. *D. N. & E. Walter & Co., et al.* v. *United States*, 44 CCPA 144, C.A.D. 652 (1957); compare this contention with defendant's contention in *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161 (1971).

case involves the question of how the imported merchandise, which defendant's pleadings admit consists of textile fabrics, should be classified in terms of the superior heading in schedule 3, part 4, subpart B, for netting, in the piece, made on a knitting machine, in competition with the superior heading in schedule 3, part 7, subpart B, for articles not specially provided for, of textile materials. With respect to that competition it is only necessary to observe that the superior heading for articles not specially provided for, of textile materials, is prefaced by a headnote which states that the subpart in which the heading appears (schedule 3, part 7, subpart B) only "covers articles, of textile materials, not covered elsewhere in the tariff schedules." Netting, in the piece, made on a knitting machine, which is covered in schedule 3, part 4, subpart B, is obviously not covered by schedule 3, part 7, subpart B. The rolls of fabric imported in this case provenly consist of netting, in the piece, made on a knitting machine. The said rolls, therefore, consist of fabric, of textile material, specially provided for by item 352.80 as netting, in the piece, and should not have been classified as though they were rolls, not specially provided for, of textile materials, under TSUS item 386.05.

The claim under TSUS item 352.80 is sustained.

Judgment will enter accordingly.

(C.D. 4546)

AMERICAN CUSTOMS BROKERAGE CO., INC., A/C ASTRAL CORP. v. UNITED STATES

Seagoing vessel

A yacht, the "MS Astral," built in Germany, registered and documented under the laws of the Netherlands Antilles, and brought into the United States by a resident thereof was improperly classified under item 696.10 of the tariff schedules as a yacht or pleasure boat valued over $15,000, and assessed with duty at the rate of 6 per centum ad valorem. The record established that the "MS Astral" was not an "importation" for tariff purposes.

IMPORTATION—WHAT CONSTITUTES IMPORTATION FOR TARIFF PURPOSES

Unless intended otherwise by Congress, the term "importation" has been held to mean the bringing of goods within the jurisdictional limits of the United States with *intent to unlade*. See *The Sherwin-Williams Co.* v. *United States*, 38 CCPA 13, C.A.D. 432 (1950).

IMPORTATION—WHAT CONSTITUTES IMPORTATION AS TO SEAGOING VESSELS

For seagoing vessels or yachts entering the United States under their own power, the general definition being inapplicable, it is essential that the vessel be brought into the United States "permanently,"

in order for it to be considered imported merchandise. The question of "permanence" must be determined on the basis of intent. See *Estate of Lev H. Prichard* v. *United States*, 43 CCPA 85, C.A.D. 612 (1956).

INTENTION—DETERMINATION

Intention is a state of mind usually evidenced by conduct or statements and "almost always manifold and complex." See *Pollock, Jurisprudence* 155 (1929); *United States* v. *Stoehr*, 100 F. Supp. 143 (M.D. Pa. 1951); *Jones* v. *State*, 192 So. 2d 285 (Fla. App. 1966); *Johnson* v. *Commonwealth*, 163 S.E. 2d 570, 209 Va. 291 (1968); *Detroit Trust Co.* v. *Hartwick*, 270 N.W. 249, 278 Mich. 139 (1936).

The record of the case at bar established that the "MS Astral" was brought to the United States only temporarily for repairs, and as part of a general "shakedown" cruise or test run. The intention was to return the "MS Astral" to the Mediterranean; its extended duration in this country was unanticipated and caused by the need for extensive repairs some of which could only be done in the United States. As a legal consequence of the intent not to bring the "MS Astral" permanently into the United States, it was not, in customs law, an "importation." Its occasional use for pleasure did not change the essential nature of the "shakedown" cruise as a test run.

Court No. 72-2-00308

Port of Honolulu

[Judgment for plaintiff.]

(Decided May 30, 1974)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RE, Judge: The question presented in this case pertains to the dutiable status of a yacht under the Tariff Schedules of the United States (TSUS). The yacht, the "MS Astral," is registered and documented under the laws of the Netherlands Antilles, and was brought into the United States by a resident of this country.

The Astral first entered the territorial waters of the United States at San Diego harbor on or about November 23, 1970. On November 24, 1970, the yacht's master, Captain Perdue, pursuant to 46 U.S.C. 104 and section 4.94 of the Customs Regulations, applied for and obtained a cruising license to cruise in and around the waters of San Diego, Los Angeles, San Francisco, Seattle and Honolulu until May 24, 1971. In March 1971, the Astral departed from California for Hawaii, where a 6 months' extension of the cruising permit was issued on May 20, 1971.

However, at the insistence of customs officials, an appraisement entry of the yacht was made on June 30, 1971 at Honolulu, Hawaii.

The Astral was thereupon classified under TSUS item 696.10, as modified by T.D. 68–9, as a yacht or pleasure boat valued over $15,000, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof. Hence, it was assessed with duty at the rate of 6 per centum ad valorem.

Plaintiff contends that the yacht was not subject to entry under the customs laws and was therefore nondutiable under either of the following grounds: (1) since there was no intent to bring the Astral into the United States permanently, it was a nonimportation, or (2) since it was owned by a nonresident, it was not imported for charter or sale to a resident of the United States.

The pertinent statutory provisions read as follows:

Tariff Schedules of the United States

General Headnotes and Rules of Interpretation

"1. Tariff Treatment of Imported Articles. All articles imported into the customs territory of the United States from outside thereof are subject to duty or exempt therefrom as prescribed in general headnote 3.

* * * * * * *

3. Rates of Duty. The rates of duty in the 'Rates of Duty' columns numbered 1 and 2 of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

* * * * * * *

5. Intangibles. For the purposes of headnote 1—

* * * * * * *

(e) vessels which are not 'yachts or pleasure boats' within the purview of subpart D, page 6, of schedule 6,

are not articles subject to the provisions of these schedules."

Schedule 6, part 6, subpart D:

"Subpart D headnote:

1. This subpart does not cover—

(i) yachts or pleasure boats provided for in items 696.05–.10 if in use or intended to be used in trade or commerce, or if brought into the United States by non-residents thereof for their own use in pleasure cruising; or

(ii) vessels which are not yachts or pleasure boats (see general headnote 5(e)).

	Yachts or pleasure boats, regardless of length or tonnage, whether motor, sail, or stream propelled, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, whether or not such yachts or boats are brought into the United States under their own power; and parts thereof:	
	Yachts or pleasure boats:	
	* * * * * * *	
696.10	Valued over $15,000 each-----	6% ad val."

46 U.S.C. 104:

"Reciprocal exemption of foreign yachts from charges and tonnage taxes; licenses.

Whenever it shall be made to appear to the satisfaction of the President of the United States that yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States are allowed to arrive at and depart from any foreign port and to cruise in the waters of such port without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes or charges for cruising licenses, the Commissioner of Customs may authorize and direct the customs authorities at the various ports of entry of the United States to allow yachts from such foreign port used and employed exclusively as pleasure vessels to arrive at and depart from any port of the United States and to cruise in waters of the United States without the payment of any charges for entering or clearing, dues, duty per ton, or tonnage taxes, but the Commissioner of Customs may, in his discretion, direct that such foreign yachts shall be required to obtain licenses to cruise, in a form prescribed by him, before they shall be allowed under the provisions of this section to cruise in waters of the United States. Such licenses shall be issued without cost to such yachts and shall prescribe such limitations as to length of time, direction, and place of cruising and action, and such other particulars as the Commissioner of Customs may deem proper."

At the trial, two witnesses testified for plaintiff: Mr. Cornelius Christian Vanderstar, a naturalized citizen of the United States and resident of Newport Beach, California, and Harry William Perdue, a retired Coast Guard lieutenant commander, who was hired as master of the Astral from approximately October 10, 1970 until May 30, 1971.

Mr. Vanderstar testified that the Astral is a 98-foot steel hull, ketch rigged motor sailer, which was built for him by a West German shipyard. He stated that he paid approximately $650,000 for the yacht upon its completion in July 1970.

Prior thereto, in April 1970, Mr. Vanderstar organized the Astral Corporation in Curaçao, Netherlands Antilles, through two Dutch companies and their representatives. The purpose of the Astral Corporation, as stated in its articles of incorporation, was the "operation of one or more seagoing yachts and everything connected therewith in the broadest sense." After forming the company, the incorporators sold all of their shares to Mr. Vanderstar, who thereby became the sole stockholder.

In July 1970, before the yacht was completed, the Astral Corporation purchased the Astral from Mr. Vanderstar, who loaned the corporation approximately $688,000 so that it could buy the yacht from him. The yacht was subsequently registered at Curaçao.

Commencing with the last half of 1970, and in 1971 and 1972, Mr. Vanderstar personally chartered the yacht for an annual fee of $140,000. Part of the chartering fee was to pay the boat's operating expenses, such as fuel, food, wages, upkeep and repairs, all of which were personally paid by Vanderstar. The balance was applied toward the repayment of the loan.

In July 1970, the Astral sailed from West Germany to Holland on the start of its "shakedown" cruise. A "shakedown" cruise is intended to test a new ship under operating conditions, and to familiarize the crew. As explained by the witness:

> "Every new boat needs a certain amount of time to sort of see how everything operates at sea, whether there were any bugs in equipment or, if changes had to be made, to get everything operating properly."

Having owned only much smaller yachts, Mr. Vanderstar did not know the duration of a "shakedown" cruise for a yacht the size of the Astral. Furthermore, the Astral was already encountering some problems in the electrical system when he acquired it in Germany, and the builder sent an engineer with him to Holland to correct some of the difficulties.

The yacht proceeded from Holland to England and thence to the Canary Islands, taking about one and a half months. It then proceeded to Curaçao, taking another one and a half to two months. It was delayed about four weeks in Curaçao because the entire air conditioning system was inoperative and a number of motors had to be rewired and changed. Finally, it went through the Panama Canal up the Mexican coast to Acapulco, where one of the diesel generators was completely overhauled and new pistons and cylinder linings were installed. The motor, however, still did not work properly. Although the generators were under warranty by the General Motors Corporation, that company did not have a representative in Acapulco.

Mr. Vanderstar then had the Astral proceed north to San Diego to "obtain a cruising permit in order to spend some time in the United States and, among other things, to have some repairs made to the boat."

The yacht remained two nights in San Diego, and then proceeded to Mr. Vanderstar's residence at Newport Beach where it was docked. Repairs were made at Newport Beach, and at the Lido Shipyard, by the crew, the shipyard, and representatives from various companies. The repairs consisted of a complete overhaul of both diesel generators, installation of new through-hull fittings to relieve the extensive exhaust pressure in the exhaust system, and installation of new piping and valves to lead the water overboard rather than through the exhaust. New piping valves and overboard fittings were also installed for the main engines to relieve some of the exhaust pressure out of the exhaust system. Additionally, in view of certain difficulties, new water filters were put into the diesel system in order to be able to observe the water in the systems.

Other repairs also had to be made. The rectangular port holes were rebuilt because they were leaking water inside instead of outside, an air-conditioning compressor was replaced as it had a broken shaft, and various repairs were made on the refrigerator and freezer system. The a.c. inverter, which never worked properly despite repairs in three ports, had to be taken completely apart. Because of a design defect, the parts were shipped back to the Chicago manufacturer where they were redesigned, rebuilt, returned to Los Angeles and reinstalled.

The outside of the hull had to be completely stripped of all the paint and putty-finish put on in Germany because the paint was peeling away and causing corrosion of the hull. The outside of the hull had to be completely refinished by the Lido Shipyard, a process which took almost two months, required the yacht to be drydocked, and cost Mr. Vanderstar in excess of $16,000.

A leaking hot-water tank that had been unsuccessfully welded in Mexico was rewelded in Los Angeles. This same tank later blew out on the cruise to Hawaii, and was repaired there at a cost of $400. Also, the toilets were replaced, the captain's cabin was rebuilt to add an extra bunk to carry a crew of six instead of five, carpeting and upholstery were replaced, and a VHF radio was installed. The cost of the work done on the hull at Lido Shipyard, together with the cost of the repairs done in Newport Beach, exceeded $30,000.

The yacht was moored at Mr. Vanderstar's residence from November 1970 to January 1971, and again for a few weeks in March. In March it made a few trial runs to Catalina Island and outside the har-

bor in order to test the motors, and to have the personnel from General Motors Diesel Works adjust the engines.

The yacht left California in late March of 1971, and arrived at Hawaii on Easter Sunday. The purpose of the Hawaiian trip was to "try out all the various items that we had on board and to see how everything was working and part of the general shakedown cruise." The yacht was used for cruising in Hawaii "running from island to island." However, although there were some guests on board, they were "still trying out the boat in various ways and still had some breakdowns in Hawaii." According to Mr. Vanderstar, "the repairs took practically all the time that the boat was here" [in the United States].

The Astral left Hawaii in June 1971, arriving in Tahiti around August. From there, it went back through the Panama Canal to the Caribbean, crossed the Atlantic reaching northern Europe in June of 1972, and proceeded to the Mediterranean. The last repairs were made in August 1972 at the West German shipyard where the Astral was built.

Mr. Vanderstar did not stay with the Astral during the entire cruise. He remained on the yacht until it arrived at the Canaries, disembarked, and then rejoined it for certain periods of time at various ports. When on board he was accompanied at times by his wife, friends, and by a cameraman on the trip from England to Curaçao.

He testified that he never intended to bring the yacht into the territorial limits of the United States as an importation; that he intended "to stay a maximum of two months, and it dragged on and on because of the larger repairs that had to be made," and that it "would have been impossible" to have the repairs done elsewhere than in the United States because there were "no services available on these items with the degree of malfunction that existed in them." He had planned to "make an extended cruise while shaking down the boat" and to have the yacht end up in the Mediterranean where it would be made ready for charter purposes.

The Astral has two gangplanks, a stern gangway that is used for Mediterranean mooring, and another, which is used in the United States, for exiting from the side. The vessel is also equipped for 220 volt a.c. shore power, the current used in Europe, and for 110 a.c. power, which is used in this country. It has a shallow draft and a retractable center board so that it can be sailed in the waters of the Bahamas and Caribbean. It is equipped for long cruising, having a large water and fuel capacity, large refrigeration and freezer storage units, and a fresh water making unit.

Captain Perdue testified that when he was interviewed for the job as master, Mr. Vanderstar told him that he intended to get the boat in

shape; that he was having problems with it and the crew; that it was breaking down; and that he wanted to take it on a shakedown cruise. Mr. Vanderstar also told him that he planned to go from "the Caribbean to Mexico, for awhile the United States, down over to Tahiti, back to the Caribbean, and then to Europe." According to Captain Perdue, all of his discussions with Mr. Vanderstar indicated that the vessel "would never come to the United States to stay, but only for a visit, as any yacht would visit any place in the world."

When Captain Perdue came on board in Curaçao, the air-conditioning system was undergoing extensive repairs and some work was being done on the engines. There were air-conditioning problems at every stop.

During its entire stay in the United States, the yacht was always under repair except for a few days. Captain Perdue stated that he took it out about three times when it was at Newport Beach, either as a work trip or to test it. The Astral also had breakdowns on the way to Hawaii. Furthermore, some of the repairs made in Newport Beach did not hold up and had to be done over. He observed that a shakedown cruise for any vessel can last for a long period of time. In the case of the Astral, the main problems were the quality of the technical work on it and getting service on the warranties.

Upon entering the territorial waters of the United States, Captain Perdue first called at San Diego where he notified customs, immigration and public health officials. He had applied for the cruising permits in San Diego and Hawaii because the Astral, in his words,

> "was a foreign vessel entering the United States and it was going to stay for awhile. It was a yacht, and the law requires it."

In having classified the Astral under item 696.10 of the tariff schedules, and having assessed duty thereunder the appropriate customs officials must have found that: (1) it was "imported into the customs territory of the United States" within the meaning of TSUS general headnote 1; and (2) that it was a yacht or pleasure boat owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof. Those determinations are endowed with a statutory presumption of correctness. 28 U.S.C. 2635(a) (1970). See *Sanji Kobata et al.* v. *United States*, 326 F. Supp. 1397, 1399, 66 Cust. Ct. 341, 344, C.D. 4213 (1971).

Accordingly, in order to prevail in this litigation it is plaintiff's burden to establish either that the Astral was not "imported" into the United States, in the tariff sense, or, that even if it were an "importation," it did not come within the ambit of item 696.10, and was therefore exempt from duty by virtue of TSUS general headnote 5.

Plaintiff challenges the action of the customs officials on both grounds, contending that the boat was not "imported into the customs territory of the United States," and that it was owned by a nonresident corporation which did not bring it into the United States for sale or charter to anyone.

Based upon all of the evidence of record, and particularly the testimony of plaintiff's witnesses, it is the determination of the court that plaintiff has successfully borne its burden of proof in establishing that the Astral was not an "importation" for tariff purposes, and was, therefore, improperly assessed for duty. Hence, it is unnecessary to reach the question raised as to the appropriateness of its classification under item 696.10 of the tariff schedules.

What constitutes an "importation" under the tariff laws of the United States has already been the subject of judicial consideration. Unless it clearly appears that Congress intended otherwise, the term "importation" has been held to mean the bringing of goods within the jurisdictional limits of the United States with intent to unlade. *The Sherwin-Williams Co.* v. *United States*, 38 CCPA 13, C.A.D. 432 (1950); *Porto Rico Brokerage Co., Inc., et al.* v. *United States*, 23 CCPA 16, 76 F.2d 605, T.D. 47672 (1935), *aff'd on rehearing*, 23 CCPA 259, 80 F.2d 521, T.D. 48111 (1936); *United States* v. *Field & Co.*, 14 Ct. Cust. Appls. 406, T.D. 42052 (1927); *United States* v. *Estate of Boshell*, 14 Ct. Cust. Appls. 273, T.D. 41884 (1926).

The foregoing definition, of course, cannot be applied literally in the case of a seagoing vessel or yacht entering the United States under its own power. As stated by the Court of Customs and Patent Appeals, in considering the applicability of paragraph 370 of the Tariff Act of 1930,[1] the predecessor tariff provision to item 696.10:

> "* * * it is evident * * * that such an entry may amount to an importation under that paragraph. It is therefore necessary to determine under what circumstances the act of bringing a yacht into the United States under its own power constitutes an importation.
>
> "The appellant cites a ruling of the Treasury Department, reported in 33 T.D. 292, T.D. 37376 as giving the proper definition of importation of a vessel. That ruling states that:

[1] Par. 370 provided as follows:

"Airplanes, hydroplanes, motor boats, and parts of the foregoing 30 per centum ad valorem. The term 'motor boat,' when used in this Act, includes a yacht or pleasure boat, regardless of length or tonnage, whether sail, steam, or motor propelled, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, whether or not such yacht or boat is brought into the United States under its own power, but does not include a yacht or boat used or intended to be used in trade or commerce, nor a yacht or boat built, or for the building of which a contract was entered into, prior to December 1, 1927."

'If coming into this country temporarily as carriers of passengers or merchandise, they are not subject to customs entry or the payment of duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.'

"Assuming that definition to be correct, it is evident that the word 'permanently,' in the case of a seagoing vessel would not preclude the use of the vessel for cruises abroad after its importation. It is also evident that the question as to whether a vessel is brought into the United States 'permanently' must be determined on the basis of intent." *Estate of Lev H. Prichard* v. *United States*, 43 CCPA 85, 87–88, C.A.D. 612 (1956).

As gleaned from the *Prichard* case, a determination as to whether a yacht is "imported," at least for purposes of paragraph 370, turns ultimately on the question of intent.

The legislative history of item 696.10 of the tariff schedules, as contained in the *Tariff Classification Study*, November 15, 1960, indicates that it was designed to carry over the provisions of paragraph 370 into the revised tariff schedules (TSUS).[2] Hence, the reasoning of the *Prichard case*, with which the court is in full accord, may serve as a guide in the decision of the present case.

Intent is a state of mind which is difficult of precise proof and can only be inferred from acts and circumstances. See *United States* v. *Stoehr*, 100 F. Supp. 143 (M.D. Pa. 1951); *Jones V. State*, 192 So.2d 285 (Fla. App. 1966). A person's intent is usually evidenced by his conduct or statements. See *Johnson* v. *Commonwealth*, 163 S.E.2d 570, 209 Va. 291 (1968); *Detroit Trust Co.* v. *Hartwick*, 270 N.W. 249, 278 Mich. 139 (1936). Expressions of intent, however, may be used for self-serving purposes. Hence, the court must scrutinize them carefully, together with the conduct of the person making them, and the external circumstances which might tend to confirm or refute them.

It is consequently necessary to determine the intent of Mr. Vanderstar in causing the Astral to enter American waters. It has been noted that "intention is almost always manifold and complex." *Pollock*, *Jurisprudence* 155 (1929). This requires an examination of Mr. Vanderstar's purpose or design. By any standard of proof, his testimony, together with that of Captain Perdue, has convinced the court that his intent was not to bring the Astral permanently into the United States. It is the finding of the court that his intention was to return the Astral to the Mediterranean, a fact that was indeed ac-

[2] The *Study*, schedule 6, part 6, states at page 327:

"Items 696.05 through 696.15 reflect the existing treatment of yachts or pleasure boats and parts thereof under paragraph 370. Paragraph 370 in defining the term 'motor boats' provides that the term does not include 'a yacht or boat built, or for the building of which a contract was entered into, prior to December 1, 1927'. This provision has been dropped as obsolete."

complished. See *In re Dorrance's Estate*, 163 Atl. 303, 309 Pa. 151 (1932) (intention required for the acquisition of a domicile of choice); *In re Dorrance's Estate*, 170 Atl. 601, 115 N.J. Eq. 268 (1934); *Restatement of Conflict of Laws 2d*, § 18 (1971). As a legal consequence of his intent not to bring the Astral permanently into the United States, the Astral was not, in customs law, an "importation" into the United States.

It is noteworthy that, in the *Prichard* case, the court resolved the question of intent on the basis of external circumstances. In that case, a yacht of Panamanian registry, purchased by Prichard, a United States resident, was brought into the United States, stopping first at Key West, Florida for fuel and then proceeding to Brownsville, Texas. The yacht was not allowed to clear from that port to go on to New Orleans until the owner filed a consumption entry and deposited estimated duties. Five days after arriving at New Orleans, the yacht went on to Havana, Cuba. All the clearance papers indicated that no cargo was carried, and it was agreed that Prichard had no intention of documenting her under the laws of the United States or of selling or chartering her to a United States resident.

Noting that there was "no direct evidence as to his intentions with respect to the yacht, and such intentions must be determined on the basis of circumstances" (43 CCPA at 88), the court found that the events therein justified the conclusion that the yacht was presumptively imported into the United States within the meaning of the Tariff Act of 1930 when she arrived at the port of Brownsville. The court stated:

> "* * * *The record is silent as to the purpose for which the yacht was brought to that port*, but since she was a pleasure ship and carried no cargo, the only reasonable presumption is that such purpose was a pleasure voyage, and the subsequent prompt departure of the yacht without cargo for New Orleans and Havana seems to strengthen that presumption.
>
> "Prichard was a resident of the United States and there is no evidence that he ever changed such residence or intended to do so. It is logical to suppose, therefore, that, although the yacht might be taken abroad whenever he so desired, its use would be based in the home port in the United States. We consider that, at least *in the absence of clear evidence to the contrary*, a resident of the United States who buys a pleasure yacht abroad and brings it to this country *must be presumed to intend to use it in this country* to such an extent as to make it properly classifiable as an import. [Emphasis added.]" 43 CCPA at 88–89.

Thus, *Prichard* teaches that when a resident of the United States brings into this country a yacht that he has purchased abroad, there is a presumption that he intends to use it here "permanently," that is,

that it constitutes an importation, "in the absence of clear evidence to the contrary."

From the uncontroverted testimony in the present case the court finds that Mr. Vanderstar at no time intended to bring the Astral permanently into the United States. The court also finds that he brought the Astral to the United States only temporarily for repairs, and as part of a general shakedown cruise which was intended to, and did, in fact, end in the Mediterranean. The extended duration of the Astral's stay, from November 1970 to the end of June 1971, was unanticipated and was caused by the need for extensive repairs. Indeed, because of the warranties by domestic manufacturers of various fittings and parts, and the unavailability of factory representatives in earlier ports of call, such as Acapulco, it was to be expected that the repairs would be made in this country.

The fact that Mr. Vanderstar, his wife and friends may have occasionally used the yacht for their pleasure does not change the essential nature of the shakedown cruise.

Undoubtedly some of the work, such as the addition of a bunk and replacement of carpeting and upholstery, was in the nature of alterations and refurbishing. That, however, was minor compared to the time and effort expended making repairs on the hull, the diesel generators, the exhaust system, the air-conditioning compressor, the a.c. inverter, the toilets, the hot-water tank, the refrigerator and freezer system, and the rectangular portholes, among others, which were necessary to place the yacht into good operating condition.

It is also noted that the defendant has failed to offer any evidence in rebuttal. It has not been shown that these repairs were unnecessary, unduly prolonged, in the nature of only general maintenance, or that all or part of the Astral's stay in the continental United States or Hawaii was solely for pleasure cruising. It is also pertinent to note Mr. Vanderstar's testimony that he planned to move his interests to Europe where he had a considerable amount of business, and was also endeavoring to buy a house in the Mediterranean.

Nor has the defendant refuted plaintiff's claims that the Astral was intended to be used in the Mediterranean at the conclusion of her shakedown cruise; that certain features, such as the stern gangplank and shallow draft, were incorporated into her design for use in Mediterranean waters; that her shakedown cruise did terminate in the Mediterranean; and that, as of the time of trial, she was being readied for chartering in that area.

Additionally it may be noted that although the defendant now contends that the yacht was "imported," i.e., brought into the country "permanently," the district directors at San Diego and Honolulu ap-

parently thought otherwise when they issued the cruising permits to the ship's master. If circumstances arose which warranted the Bureau's subsequent change of position, none has been stated, and the record is silent on this point.

In view of the foregoing, it is the determination of the court that the Astral was not brought permanently into the United States and hence was not "imported" within the meaning of general headnote 1 of the Tariff Schedules of the United States. Therefore, it was not subject to customs duty.

Judgment will issue accordingly.

(C.D. 4547)

MATTEL, INC. *v.* UNITED STATES

On Plaintiff's Motion for Judgment on the Pleadings and Defendant's Cross-Motion for Summary Judgment

Port of Los Angeles, Court Nos. 69/27099, etc. on wigs for dolls

[Plaintiff's motion granted.]

(Dated June 5, 1974)

R. Kenton Musgrave (*Barnes, Richardson & Colburn*, associate counsel; *Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

MALETZ, Judge: These six consolidated actions come before the court on plaintiff's motion for judgment on the pleadings and defendant's cross-motion for summary judgment. The merit of plaintiff's claim as to the proper classification of the importations is not in dispute. The sole issue, rather, is whether certain "Sec. 520(c) request letters" (as they are characterized in the complaint) constitute valid protests within the meaning of section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514),[1] and thereby invest this court with jurisdiction over the actions.

The importations in question consist of wigs for dolls which were entered at the port of Los Angeles between March 1967 and October 1967 and classified by the government under item 737.90 of the tariff schedules as "toys," dutiable at the rate of 35% ad valorem. Further, the present importations are the same in all material respects as the wigs for dolls involved in *Mattel, Inc.* v. *United States*, 61 Cust. Ct. 75, C.D. 3531, 287 F. Supp. 999 (August 8, 1968), which were held to

[1] The statutory references here and hereafter are to the provisions that were in effect during the period in issue, which period antedated the amendments effected by the Customs Courts Act of 1970, Pub. L. 91-271, 84 Stat. 274. Also for this reason, all U.S.C. references are to the 1964 edition.

be properly classifiable under item 790.70 as "wigs," dutiable at the rate of 14% ad valorem, rather than under item 737.90 as "toys."

The entries covered by the present protests were liquidated between October 14, 1968 and November 22, 1968, after the decision in C.D. 3531 had become final and prior to the decision of the Commissioner of Customs, published on December 19, 1968, to limit that decision to the specific importation there involved (T.D. 69–2).[2]

Within 60 days after each liquidation, plaintiff filed a letter with the district director of customs requesting correction under section 520(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), of the classification of the wigs. The letters, which were signed by the "Manager Customs Administration" of the plaintiff-importer, are identical in format and wording except for the specific data relating to the particular entry. Each lists the I.R.S. number, entry number, date of entry and of liquidation, and reads as follows (as taken from the letter dated November 25, 1968 in entry number DE 67–262294 in protest 70/42452):

> Gentlemen:
>
> Correction is requested under Section 520(c) of the Tariff Act of 1930, as amended, concerning wigs, which were classified as "Toys" under item 737.90. In a Customs Court Decision (C.D. 3531), Mattel, Inc. v. United States, decided August 8, 1968, it was held these wigs were classifiable under item 790.70 at [sic] "Wigs."

Article No.	Commodity	Returned At	Should be
1379–9993 1394–9993	Wigs	35%	14%

The supervisory liquidator, Customs Region VII, denied the requests in letters which began—

> Your claim dated * * * has been reviewed by this office under the provisions of section 520(c)(1), Tariff Act of 1930.

and then stated (in language which varied in each) that C.D. 3531 was restricted to the specific merchandise therein and that the wigs would remain classified under item 737.20.[3]

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[2] In a second test case, involving merchandise "substantially identical" to that in C.D. 3531, the court again held that wigs for dolls were properly classifiable under item 790.70 as wigs rather than as toys under item 737.90, *Mattel, Inc. v. United States*, 65 Cust. Ct. 616, C.D. 4147 (1970).

[3] For example, the letters refusing to reliquidate the entries covered by protests 69/27099, 69/27100 and 69/27101 stated:

> It has been disallowed because no error was made in liquidation. The liquidated tariff classification is correct. C.D. 3531 limits to specific importation which was the subject of that decision [sic].

The letter refusing to reliquidate the entry covered by protest 70/42452 stated:

> It has been disallowed because of T.D. 69–2 – the import specialist's office would classify under 737.90.

Within 60 days thereafter, plaintiff filed a protest in each of the actions herein against the refusal to reliquidate.

The protests in court numbers 69/27099, 69/27100 and 69/27101 read in pertinent part as follows:

> * * * The reasons for objections under the Tariff Act of 1930 or any amendments thereto are as follows: Request for correction under 520(c) of the Tariff Act was timely made after liquidation of this entry on 10/14/68. Basis for this request was C.D. 3531 decided August 8, 1968, and a telephone call to Mr. Michael Long of the liquidation division, U.S. Customs, in which permission was given to handle this matter as a mistake of fact under 520(c) instead of a formal protest. The Bureau's decision to limit to the specific importation, which was the subject of C.D. 3531, was published in the Federal Register on December 19, 1968, over one month after the liquidation of this entry. We claim that liquidation of this entry on 10/14/68 with a classification of toy for wigs was a mistake of fact at this time. We therefore protest the refusal of the Director to re-liquidate this entry under 520(c). * * *

The other three protests were in like vein: they stated that correction had been requested under section 520(c) (for the reason indicated); cited C.D. 3531 as the basis for the claimed classification and rate; and noted the subsequent administrative determination to limit that decision to the entry therein.

Plaintiff's complaint, which was based on the district director's refusal to reliquidate under section 520(c) was amended to include, as a second cause of action, the claim that the letters requesting reliquidation constituted timely protests filed under section 514 of the Tariff Act of 1930, as amended, and should have been treated as such by the appropriate customs officials. Subsequently, plaintiff abandoned its claim under section 520(c), leaving only its contention that the letters are valid section 514 protests.

Sections 514 and 520(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1520(c)), read in pertinent part as follows:

> SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.
>
> * * * all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable * * * and his liquidation or reliquidation of any entry * * * shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons * * * unless the importer, consignee, or agent of the person * * * shall, within sixty days after * * * file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of any entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation.

SEC. 520. REFUNDS AND ERRORS.

* * * * * * *

(c) Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of the entry, appraisement, or transaction; * * *

The authorization in section 514 for filing protests against any decision of the collector as to the rate and amount of duties chargeable upon imported merchandise requires a distinct and specific statement of the reasons for the objection thereto. While no formal rules have been devised for the manner in which such objections should be expressed, the court has held letters to be sufficient as protests where they conveyed to the customs officials the objection in the mind of the protesting party so that the former would have an opportunity to review their decision and take action accordingly. This principle was expressed as follows in the oft-cited case of *United States* v. *Sheldon & Co.*, 5 Ct. Cust. Appls. 427, 429, T.D. 34946 (1914):

> It was held in substance in Bliven *v.* United States (1 Ct. Cust. Appls., 205) that one cardinal rule in construing a protest is that it must show fairly that the objection afterwards made at the trial was in the mind of the party at the time the protest was made and was brought to the knowledge of the collector to the end that he might ascertain the precise facts and have an opportunity to correct the mistake and cure the defect if it was one that could be obviated. This, in effect, has long been the doctrine enunciated by the Supreme Court of the United States. Davies *v.* Arthur (96 U.S., 148), Arthur *v.* Morgan (112 U.S., 495), United States *v.* Salambier (170 U.S., 621). See also Carter *v.* United States (1 Ct. Cust. Appls., 64; T. D. 31033) and Sonneborn's Sons *v.* United States (3 Ct. Cust. Appls., 54; T. D. 32348).
>
> In the various cases where this principle has been upheld it will appear that in some the correct paragraph has been cited without mentioning the rate of duty; again, the correct rate has been mentioned without referring to the paragraph; and other discrepancies and infirmities have been considered and discussed. It has, however, uniformly been considered, as already suggested, that one great rule of construction is that *at the time he makes his protest the importer must have in mind the objection afterwards*

made at the trial and must sufficiently, in view of all the circumstances, call the collector's attention thereto, so that he may consider and pass upon the same; and the determination of this case must stand or fall upon the application of that rule. [Emphasis in original.]

To similar effect is the following statement in *National Carloading Corporation* v. *United States*, 44 Cust. Ct. 493–494, Abstract 64258 (1960):

> The right of an importer to protest a liquidation of imported merchandise is statutory. Section 514 of the Tariff Act of 1930 is the enabling provision. It specifies the time for filing a protest, to wit, within 60 days after liquidation, and the substance thereof, to wit, that it shall be in writing, "setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto."
>
> It has been said of a protest that it need not be made with technical precision, but it is sufficient "if the importer indicates distinctly and definitely the source of his complaint, and his design to make it the foundation for a claim against the government." *Greeley's Administrator* v. *Burgess* (*Converse* v. *Burgess*), 59 U.S. 413. If it fairly and accurately apprises the collector of the objection which is raised against his action, so that he may have an opportunity to reconsider, a protest is legally sufficient. *Arthur* v. *Morgan*, 112 U.S. 495.
>
> > * * * A protest which indicates to an intelligent man the ground of the importer's objection to the duty levied upon the articles should not be discarded because of the brevity with which the objection is stated. [*Schell's Executors* v. *Fauché*, 138 U.S. 562.]
>
> However, it is also settled law that a protest must point out or suggest the provision of law which it is claimed controls the classification of the subject merchandise and the assessment of duty thereon. *Herrmann* v. *Robertson*, 152 U.S. 521. It may not incorporate, by reference to another document, the reasons embodied therein, unless the same is physically annexed to the writing which purports to be the protest. *Robert G. Winny* v. *United States*, 7 Treas. Dec. 774, T.D. 25297. And if the protest itself gives no indication of the reasons why the collector's action is alleged to be erroneous, and, further, does not set forth the paragraphs which allegedly properly govern the disposition of the merchandise, the document is fatally defective. *Bernard, Judae & Co.* v. *United States*, 71 Treas. Dec. 558, T.D. 48899.

Applying the criteria enunciated in *Sheldon* and *National Carloading*, letters have been held to be sufficient as protests where plaintiff gave the wrong entry number, *International Forwarding Co.* v. *United States*, 36 Treas. Dec. 294, T.D. 37972 (1919); cited the wrong law as the basis for its claim, *Gallagher & Ascher Co.* v. *United States*, 45 Cust. Ct. 354, Abstract 64820 (1960); failed to cite the presiden-

tial proclamations which imposed the fee that was being challenged, *How-Tex Peanut Company, Inc.* v. *United States*, 54 Cust. Ct. 316, Abstract 69066 (1965); failed to cite the claimed applicable provision of the tariff statute, *Palmer Import Co., Inc.* v. *United States*, 55 Cust. Ct. 434, Abstract 69561 (1965); *Norman G. Jensen, Inc.* v. *United States*, 55 Cust. Ct. 418, Abstract 69537 (1965); failed to enumerate the tariff paragraph *and* rates of duty claimed to be applicable, *Needler's British Imports* v. *United States*, 39 Cust. Ct. 321, Abstract 60926 (1957); failed to specify the applicable paragraph or rate of duty where error was alleged in classifying separately invoiced importations as entireties, *Torch Mfg. Co., Inc.* v. *United States*, 57 Cust. Ct. 521, C.D. 2863 (1966); failed to specify the specific provision within the claimed paragraph relied upon, *W. J. Byrnes & Co., Inc., National Welding Equip. Co.* v. *United States*, 56 Cust. Ct. 72, C.D. 2613 (1966); failed to cite by name the different articles covered by the protest which referred to the merchandise solely as "engine parts," *Beck Distributing Corp.* v. *United States*, 67 Cust. Ct. 358, C.D. 4298 (1971); and failed to specify the objection to the corrector's action but referred therein to another letter which set forth the substance of its claims, *Atlantic Linen Importing Co.* v. *United States*, 54 Cust. Ct. 290, Abstract 68985 (1964).

In short, the court, taking a liberal posture, has held that, however cryptic, inartistic, or poorly drawn a communication may be, it is sufficient as a protest for purposes of section 514 if it conveys enough information to apprise knowledgeable officials of the importer's intent and the relief sought. Thus, even a letter which included a request as to the procedure for protesting was treated as legally sufficient where it was timely and disclosed the basis for plaintiff's objections. *Robert Seibert* (*Mrs. Robert Seibert*) v. *United States*, 65 Cust. Ct. 380, C.D. 4108 (1970).

Turning to the letters in issue, there can be no doubt as to the nature of plaintiff's objection to the district director's liquidation of the entries in issue, namely, that the district director erred in assessing the imported doll wigs under item 737.90 at 35% and that they should have been assessed under item 790.70 at 14%.

However, a determination by customs officers as to the classification of merchandise is a conclusion of law. *United States* v. *Imperial Wall Paper Co.*, 14 Ct. Cust. Appls. 280, 282, T.D. 41886 (1926). Therefore, an erroneous classification of merchandise by the district director under the tariff statute is not a "clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law" within the meaning of section 520(c), but a mistake as to the applicable law which could only be remedied by filing a protest under section 514 within 60 days after liquidation. *Fibrous Glass Products, Inc.* v. *United*

States, 63 Cust. Ct. 62, C.D. 3874 (1969), appeal dismissed, 57 CCPA 141 (1970); *United China & Glass Co.* v. *United States*, 66 Cust. Ct. 207, 211, C.D. 4191 (1971).

In *Fibrous Glass Products*, plaintiff filed a protest within 60 days after the denial by the collector of its request for relief under section 520(c). This request for relief was filed over nine months after liquidation of the entry and was based on an alleged mistake of fact by the collector in not classifying certain fiber glass mats in conformity with the decision in *United States* (*Index Industrial Corp., Party in Interest*) v. *National Starch Products, Inc.*, 50 CCPA 1, C.A.D. 809 (1962), involving similarly produced sheets of particle board.

The court in *Fibrous Glass Products* dismissed the protest, holding (63 Cust. Ct. at 64–65):

> * * * Plaintiff's request for relief to correct a mistake of fact under section 1520(c)(1) filed nine and a half months after liquidation is actually an attempt to correct an error of judgment on the part of the collector in making a classification of the merchandise under the wrong paragraph of the Tariff Act of 1930, which is a mistake in the applicable law. A finding that merchandise is covered by a certain paragraph of the tariff act is in the nature of a conclusion of law. *United States* v. *Imperial Wall Paper Co.*, 14 Ct. Cust. Appls. 280, T.D. 41886 (1926). Section 1520(c)(1) expressly excepts mistakes of law from its coverage. Plaintiff's remedy was to file a protest under section 1514 of Title 19 of U.S.C.A. (section 514, Tariff Act of 1930, as amended) within sixty days after liquidation.
>
> Since plaintiff is seeking to correct an error amounting to an error in the construction of a law and its protest was filed after the expiration of the time limitation imposed by section 1514 of Title 19 of U.S.C.A. (section 514, Tariff Act of 1930, as amended) for the filing of protest to correct such errors the court is without power to entertain it. It, therefore, follows that the claim presented in plaintiff's protest is not before the court for decision, and the protest must be dismissed for lack of jurisdiction.

A similar situation arose in *United China & Glass Co.* v. *United States*, *supra*, 66 Cust. Ct. 207, where plaintiff had filed under section 520(c) a petition for reliquidation of an entry of decorated cups and saucers some eight months after liquidation. The petition claimed that the merchandise had been classified by the collector as "tableware" contrary to the holding in *United States* v. *The Baltimore & Ohio R.R. Co. a/c United China & Glass Company*, 47 CCPA 1, C.A.D. 719 (1959); that similar articles were "not tableware"; and that the collector's action therefore constituted a clerical error, mistake of fact, or other inadvertence in the liquidation not amounting to an error in the construction of law under section 520(c). A protest was filed within 60 days after the collector's refusal to reliquidate the entry under section 520.

The court granted defendant's motion to dismiss the protest for lack of jurisdiction and, citing the *Fibrous Glass* case, stated, among other things, that plaintiff's request to correct a clerical error was actually an attempt to correct an error in the construction of the law; that its remedy was to file a protest within 60 days after liquidation under section 514; and that, in the absence of such timely filing, the protest must be dismissed for lack of jurisdiction. 66 Cust. Ct. at 211–212.[4]

In short, where an importer's 520(c) claim is based on an alleged error of law and is filed after the 60-day period provided for in section 514, this court will refuse to entertain it for lack of jurisdiction. E.g., *Fibrous Glass Products, Inc.* v. *United States*, *supra*, 63 Cust. Ct. 62; *United China & Glass Co.* v. *United States*, *supra*, 66 Cust. Ct. 207.

On the other hand, where such a claim is filed *within* 60 days after liquidation and meets all the standards (discussed above) for a section 514 protest, the court has held that it had jurisdiction. For example, in *W. N. Proctor Company* v. *United States*, 64 Cust. Ct. 543, C.D. 4031 (1970), plaintiff had filed objections within 60 days after liquidation to the classification of merchandise in two entries, claiming in each instance that the importation was classifiable under another provision at a specified rate, and requesting as to each liquidation to "*have the invoice returned to the U.S. Appraiser under Section 520(c)(1).*" [Emphasis added.] In each case the collector denied the "protest" stating that it was reviewed by him "in accordance with section 515, Tariff Act of 1930, and was affirmed." After evidence had been adduced on trial, defendant raised the issue that there was no proper protest before the court. "Presumably," the court noted, "this position rested on the contention that there was no timely protest under section 514 and that the collector had not refused to reliquidate under section 520." 64 Cust. Ct. at 544. The presiding judge then granted plaintiff's motion to amend the protests (over defendant's objection) by alternatively claiming that the merchandise was classifiable as claimed in the protests originally filed.

The court found that the section 514 filing requirements were met, stating (64 Cust. Ct. at 545):

> Whether or not the protests might have been acceptable as a request for reliquidation to correct a manifest clerical error, there is no occasion now to speculate. Plaintiff does not press any such claim, but rests on the contention that they meet the statutory requirement for protests filed under section 514 and were acted on

[4] See also *C. J. Tower & Sons of Buffalo, Inc.* v. *United States*, 68 Cust. Ct. 17, C.D. 4327, 336 F. Supp. 1395 (1972) (appeal pending), where the court examined the legislative history of section 520(c), as amended by the Customs Simplification Act of 1953, 67 Stat. 519, and noted that ordinarily a request for reclassification based upon an error of judgment concerning the construction of a law is not a matter within the scope of section 520(c), but within the purview of section 514.

as such by the collector in reporting to the court the affirmance of his "protested decision".

We agree with our colleagues of the Third Division who recently held that an attempt to correct an error of judgment on the part of the collector in classifying merchandise is a mistake of law and requires protest to be filed within sixty days after liquidation.

That filing requirement has been met here. *Fibrous Glass Products, Inc.* v. *United States*, 63 Cust. Ct. 62, C.D. 3874 (1969) [appeal dismissed].

Thus, in *Proctor*, the court did not hesitate to look beyond the form of the importer's objections to their substance in order to determine their true character and decide whether they met the jurisdictional requirements of the applicable statute.[5]

By the same token, this court finds no basis for denying the sufficiency of letters which, as defendant concedes, meet the requirements of section 514 that they "shall state distinctly and specifically certain matters in respect to each entry" (br. 13) merely because of the gratuitous addition of the words "under section 520(c)." The fact that plaintiff, like the importer in *Proctor*, initially treated the letters otherwise than as section 514 protests does not bar it from now contending that they are protests. This is particularly true when it is considered that each of plaintiff's letters contain all the required elements of a protest. Not only were the letters filed within 60 days after the dates of liquidation of the entries involved, they set forth the following details: the entry numbers; the dates of entry; the dates of liquidation; the category of merchandise; the provision of the tariff schedules under which the merchandise was classified; a citation to the case of *Mattel, Inc.* v. *United States*, C.D. 3531, which held the merchandise classifiable under item 790.70 as "wigs"; the provision under which the merchandise was claimed classifiable; and the rates of duty applicable to the conflicting provisions. In sum, as previously indicated, the letters (written by a nonprofessional employee of the importer) left no doubt as to the nature of plaintiff's objection to the district director's liquidation of the entries in question, namely that the district director erred in assessing the imported doll wigs under item 737.90 at 35% ad valorem and that they should have been assessed at 14% ad varolem under item 790.70 in accordance with the decision of this court in C.D. 3531. Since the letters clearly set forth the claim of

[5] To like effect is *J. Honig* v. *United States*, 16 Cust. Ct. 276, Abstract 51091 (1946) where plaintiff filed a protest seven months after liquidation claiming clerical error under section 520(c). After trial, the court stated (p. 277) that "[a]*lthough the claim set forth in that protest is termed clerical error it is clearly a protest against the collector's classification,*" but decided to overrule rather than dismiss the protest. [Emphasis added.] It then denied a motion to amend the protest to include a classification claim on the ground that it would nullify the statute of limitations in section 514.

the importer and were filed within the time required by section 514, they should have been treated as protests by the local customs officials. As stated in *The George C. Whitney Co.* v. *United States*, 16 Ct. Cust. Appls. 301, 303, T.D. 42874 (1928):

> The statute requiring a protest on the part of importers was not designed for men learned in the law and trained to the niceties in pleading but for men engaged in commercial pursuits. Strict rules of construction are not applicable to protests, and it is sufficient if the importer indicates distinctly and definitely the sources of his complaint and his desire to make it the foundation of a claim against the Government. * * *

Nor is the result altered by the fact that the letters here were ostensibly treated by the district director as section 520(c) requests, whereas those in *Proctor* were returned as section 514 protests. The test for determining the sufficiency of a protest under section 514, as outlined above, is an objective one and is not dependent upon the district director's subjective reaction thereto. Moreover, it is interesting to note that while the letters of the district director's supervising liquidator to plaintiff denying the latter's claims stated that the claims were reviewed under section 520(c), the letters went on to state that the claims were disallowed because (1) the liquidated classification was correct; and (2) the Commissioner's ruling in T.D. 69–2 limited C.D. 3531 to the specific importation there involved. In other words, the district director denied the claims on the merits, rather than on the basis that section 520(c) was not applicable to correct an alleged erroneous classification of merchandise. Cf. e.g., *United China & Glass Co.* v. *United States*, *supra*, 66 Cust. Ct. at 209. From this, it would seem that in substance—although not in form—the district director in actuality treated plaintiff's "Sec. 520(c) request letters" as section 514 protests.

In conclusion, the court finds that the letters of request constituted timely protests within the meaning of section 514, and that the protests against the district director's refusal to reliquidate the entries in accordance therewith were timely filed. Inasmuch as the merchandise consists of wigs for dolls the same in all material respects as those involved in C.D. 3531 which were held to be properly classifiable as "wigs" under item 790.70, plaintiff must prevail in its stated second cause of action. Therefore, plaintiff's motion for judgment on the pleadings is granted and defendant's motion for summary judgment is denied. The district director at the port of Los Angeles is directed to reliquidate the entries accordingly.

(C.D. 4548)

FEDTRO, INC. *v.* UNITED STATES

Opinion and Order on Cross-Motions for Summary Judgment

Court No. 71-6-00454

Port of New York

[Plaintiff's motion granted.]

(Dated June 13, 1974)

Siegel, Mandell & Davidson (*Allan H. Kamnitz* and *Brian S. Goldstein* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

NEWMAN, Judge: The parties in this civil action agree that there is no genuine issue as to any material fact, and have filed cross-motions for summary judgment pursuant to rule 8.2.

The merchandise in issue, described on the invoices as "Model CH-ACD Multi Purpose Deluxe Battery Charger with Silicon Diode", was imported from Japan in 1970 and 1971. The regional commissioner of customs at the port of New York classified the merchandise as "rectifying apparatus", and assessed duty at the rate of 10 or 9 per centum ad valorem, depending upon the date of entry, under item 682.60 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68-9. Plaintiff claims that the imports are properly dutiable at the rates of 8 or 7 [*sic* 6.5] per centum ad valorem, depending upon the date of entry, under the provision in item 688.40, TSUS for electrical articles, not specially provided for.

The parties have filed memoranda of law, affidavits and other documents in support of their respective motions. Additionally, I have before me a representative sample of the merchandise submitted by plaintiff.

I have concluded that the Government's classification was erroneous, and that the merchandise is properly dutiable under item 688.40, TSUS, as claimed by plaintiff. Accordingly, plaintiff's motion for summary judgment is granted; and defendant's cross-motion for summary judgment is denied.

STATUTE INVOLVED

Schedule 6, part 5, TSUS:

	Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof:	
	* * * * * * *	
682.60	Other	10% or 9% ad val. [depending upon date of entry]
	* * * * * * *	
688.40	Electrical articles, and electrical parts of articles, not specially provided for	8% or 6.5% ad val. [depending upon date of entry]

THE FACTS

The pertinent facts are:

The CH–ACD battery charger is designed to perform two functions: (1) recharge small dry cell batteries, such as those commonly used in flashlights, toys, transistor radios and appliances; and (2) test the degree of charge of 1.5 volt batteries.

The article comprises a plastic housing with a movable cover on the front, which opens and closes for the insertion and removal of batteries. On the front of the article, also, are a red plastic lens (covering a light bulb) designated "CHARGE", *and* a clear plastic lens (covering a light bulb) designated "TEST". Within the housing are movable battery contacts which are connected in a series loop or path, which includes a rectifying circuit and a pair of input terminals. Batteries to be charged are placed between adjacent contacts to receive a charging current. The actual charging of batteries is accomplished through the use of a single diode (rectifier) and a current limiting resistor in what is usually referred to as a "half-wave" rectifying circuit. This rectifying circuit serves to convert alternating current (a.c.) into direct current (d.c.).

As indicated above, the imported article includes a battery testing feature, which can be used to test the charge of 1.5 volt batteries.[1]

[1] Higher voltages will burn out the test indicator bulb.

The testing circuit functions only when the front cover is open, whereas the charging circuit operates only when the front cover is closed. Moreover, the rectifying circuit is inoperative while testing a battery's charge, and the testing circuit is inoperative while using the rectifying circuit.

The battery tester operates without connection to an external power source (viz., without being plugged into an electrical outlet), and does not convert a.c. into d.c.[2]

According to the operating instructions accompanying the imported article, batteries should first be tested to determine whether or not they are rechargeable, as indicated by the presence or absence of illumination on the "TEST" indicator light. Batteries to be tested are inserted into the special section of the article designated "FOR TEST". The degree of illumination on the indicator bulb reveals the condition of the battery and the charging period required. Thus, the operating instructions specify:

> "A) If test light glows very brightly—battery is fully charged *and should not be charged at all.*
> B) If test light glows with medium brightness, battery needs a 'booster charge' only. Refer to table for charging period, depending on type of battery.
> C) If test light is very dim, battery needs a full charge. (see table)
> D) If test light fails to light at all—the battery is dead, *and charging should not be attempted*". [Emphasis added.]

As apparent from the foregoing operating instructions, in certain circumstances the test feature of the article would be utilized, but the charging feature would not be utilized.

Finally, according to the instructions accompanying the article, when the specified time for recharging has elapsed, the battery tester shows whether a recharge was effective.

In summary, the undisputed facts are: The imported articles serve a dual function—charging and testing batteries; the rectifying circuit for conversion of a.c. to d.c. is utilized when charging batteries; and the testing circuit does not rectify (convert a.c. to d.c.).

CONTENTIONS OF THE PARTIES

Defendant contends that the articles are primarily a battery charger (the testing feature being incidental or auxiliary), and therefore, the merchandise is properly dutiable as "rectifying apparatus" under item 682.60, TSUS. In support of its position defendant cites the following cases: *Trans-Atlantic Company* v. *United States*, 60 CCPA

[2] The testing circuit derives power from the battery being tested.

100, C.A.D. 1088, 471 F. 2d 1397 (1973); *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970); *United Carr Fastener Corporation* v. *United States* (*Northern Screw Corp., Party in Interest*), 54 CCPA 89, C.A.D. 913 (1967); *J. E. Bernard & Co., Inc.* v. *United States*, 66 Cust. Ct. 362, C.D. 4215 (1971); *Fedtro, Inc.* v. *United States*, 65 Cust. Ct. 35, C.D. 4050 (1970); *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970); *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966).

Plaintiff insists that the testing feature makes the CH–ACD battery charger "more than" a rectifying apparatus, and to buttress its argument cites the following cases: *Dollar Trading Corp.* v. *United States*, 60 CCPA 10, C.A.D. 1074 (1972); *United States* v. *Acec Electric Corp.*, 60 CCPA 113, C.A.D. 1091 (1972); *Fedtro, Inc.* v. *United States*, 59 CCPA 16, C.A.D. 1028, 449 F. 2d 1395 (1971); *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 96, C.D. 3881 (1969).

The Issue

The legal question to be determined is whether, regardless of the battery testing feature, the imported article constitutes merely "rectifying apparatus", as argued by the Government; or whether the testing element removes the article from that classification because it is "more than" such apparatus, as urged by plaintiff.

The CH–ACD Battery Charger is "More Than" a Rectifying Appartus

It is, of course, a fundamental rule in judicial construction of tariff terms that an item which is "more than" a certain article cannot fall within the *eo nomine* provision for that article. *United States* v. *New York Merchandise Co., Inc., supra; Servo-Tek Products Co.* v. *United States*, 57 CCPA 13, 15, C.A.D. 969, 416 F. 2d 1398 (1969). However, in certain cases merchandise has been held classifiable on the basis of its primary design, construction and function, even though it is capable of performing other auxiliary or incidental operations. See e.g.: *Trans-Atlantic Company* v. *United States, supra; United Carr Fastener Corporation* v. *United States, supra; J. E. Bernard & Co., Inc.* v. *United States, supra; Fedtro, Inc.* v. *United States*, 65 Cust. Ct. 35, C.D. 4050 (1970); *Schick X-Ray Co., Inc., supra; Astra Trading Corp.* v. *United States, supra.* Thus, in *E. Green & Son (New York) Inc.* v. *United States*, 59 CCPA 31, C.A.D. 1032, 450 F. 2d 1396 (1971), respecting the "more than" doctrine, the majority of the appellate court observed (59 CCPA at 34):

> "Only the most general of rules can be ascertained from the previous decisions dealing with the "more than" doctrine, and it

appears that each case must in the final analysis be determined on its own facts. See *United Carr Fastener Corp.* v. *United States*, 54 CCPA 89, C.A.D. 913 (1967), and the cases cited therein. *In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue.* It is well established that in determining the common meaning of a term or word used in a tariff provision, court decisions, dictionary definitions, and other lexicographical authorities may be considered". [Emphasis added.]

Webster's Third New International Dictionary, 1966 ed., provides the following definitions:

> "rectifier * * * 3: a device (as a vacuum tube) for converting alternating current into direct current. * * *"
>
> "rectify * * * 8: to make (an alternating current) unidirectional. * * *"

The term "apparatus" was construed by the court in *J. E. Bernard & Co., Inc.* v. *United States*, 62 Cust. Ct. 536, 542–543, C.D. 3822, 299 F. Supp. 1129 (1969), *aff'd* 58 CCPA 91, C.A.D. 1009, 436 F. 2d 506 (1971), citing the following definition in *Funk & Wagnalls New Standard Dictionary of the English Language* (1952 ed.):

> "apparatus 1. Any complex device or machine designed or prepared for the accomplishment of a special purpose * * *".

Further, in the *Summaries of Trade and Tariff Information*, Schedule 6, Volume 10, page 130 (1969), "rectifiers" and "rectifying apparatus" are described by the Tariff Commission as follows:[3]

> "Rectifiers and rectifying apparatus.—Rectifiers and rectifying apparatus generally convert AC energy to DC energy, and vary in complexity from a single component, such as a silicon-controlled rectifier, to devices consisting of certain combinations of components (such as tubes, transistors, capacitors, resistors, and diodes) in such apparatus as battery chargers and DC power supplies. * * *"

Section 85.01 of the *Brussels Nomenclature* covers, *inter alia*, rectifiers and rectifying apparatus used for converting a.c. into d.c., which includes (*Explanatory Notes*, vol. 3, chapter 85, p. 928):

> "(E) Battery chargers. These consist essentially of rectifiers with associated transformer and current control apparatus".

Plaintiff concedes that the article in issue has a rectifying circuit for *charging* batteries. Defendant, on the other hand, does not dispute

[3] The *Summaries of Trade and Tariff Information* has been referred to as an aid in determining the scope of tariff provisions. See e.g.: *American Bristle & Hair Drawing Co., Keer, Maurer & Co.* v. *United States*, 59 CCPA 104, C.A.D. 1048, 458 F. 2d 524 (1972); *Tanross Supply Co., Inc.* v. *United States*, 58 CCPA 26, 31, C.A.D. 1000, 433 F. 2d 1332 (1970). See also *Lyons Export & Import, Inc.* v. *United States*, 59 CCPA 142, 144, C.A.D. 1056, 461 F. 2d 830 (1972).

that in *testing* the charge of a battery, the article does not rectify or convert a.c. energy to d.c. energy. Hence, it is apparent that the imported merchandise is a multipurpose or combination article having a feature which does not convert a.c. energy to d.c. energy.

The rule respecting the classification of combination or multifunction articles, which is deemed applicable under the facts of this case, was succinctly stated in *Robert Bosch Corp., supra*, 63 Cust. Ct. at pp. 103–104:

> "The principle is well settled that where an article is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute. *Cragston Corporation* v. *United States*, 51 CCPA 27, C.A.D. 832 (1963); *United States* v. *The A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962); *Garrard Sales Corp.* v. *United States, supra* [35 CCPA 39, C.A.D. 369 (1947)]; and *Hirsch & Co. et al.* v. *United States*, 4 Ct. Cust. Appls. 82, T.D. 33365 (1913). * * *"

In *Bosch*, the court held that a solenoid switch, which performed the *mechanical function* of engaging a motor vehicle starter into gear with the flywheel in addition to the *electrical function* of causing the current to flow from the battery to the ignition system, was *more than an electrical switch* under item 685.90, TSUS, since both functions were significant.

In *Fedtro, Inc.* v. *United States*, 59 CCPA 16, C.A.D. 1028, 449 F. 2d 1395 (1971), merchandise invoiced as "4-way Flasher Switches for Automobiles" was classified by the Government under the provision for switches in item 685.90, TSUS. The importer claimed that the merchandise was more than a switch and properly dutiable as visual signalling apparatus under item 685.70, TSUS. The article in issue was described by the appellate court as follows (59 CCPA at p. 18):

> "The imported article is used to connect the front and back signal lamps of an automobile with the flasher circuit for the directional signals, in such a manner that all four lamps flash simultaneously. The article includes a switch which is selectively operative to provide the 4-way flashing action, an indicator light, a capacitor connected across the switch terminal, and a fuse in series circuit with the switch. These elements are disposed in a housing which is adapted for mounting on the dashboard. The indicator light is made up of a red jeweled lens on the housing cooperating with a lamp bulb in a socket disposed within the housing. The socket of the indicator light is so wired that, when the 4-way switch is on, the light flashes simultaneously with the front and back signal lamps. When the 4-way switch is off, the indicator light is in circuit through the brake light switch of the automobile so as to indicate when that switch is closed".

Plaintiff's contention that the merchandise was "more than" a switch was predicated upon the indicator light. The trial court rejected the plaintiff's "more than" argument, stating (64 Cust. Ct. 323, 330, C.D. 3998 (1970)):

> "It is apparent from the record that [the merchandise] was designed to function primarily as a switch. Indeed [it] is even described as a "Flasher switch" on the installation and operation instruction card which accompanied it * * *. The fact that [it] monitors the brake light switch and has other features and functions is, in the court's opinion, merely incidental to the primary function of the electrical switch. It is, therefore, not more than a switch. * * *"

In reversing the trial court's judgment, the appellate court commented (59 CCPA at p. 18):

> "We disagree with the court that the function of the indicator light, in particular the function of monitoring the operation of the brake light switch, is merely incidental to the switching function of the merchandise. *The indicating light structure and its circuitry take no part in the switching function. These elements were specifically designed to add additional functions to the merchandise which are significantly different from the switching function. Thus, the merchandise is more than an apparatus for making or breaking electrical circuits*". [Emphasis added.]

In my view, the article in the present case is quite analogous to the article in the prior *Fedtro* case. To paraphrase a portion of the appellate court's decision quoted above: "The [testing] light structure and its circuitry take no part in the [rectifying] function. These elements were specifically designed to add [an] additional function to the merchandise which is significantly different from the [rectifying] function. Thus, the merchandise is more than [a rectifying apparatus]".

Significantly too, the appellate court held that the merchandise in the prior *Fedtro* case was more than a switch, notwithstanding the fact that the article was described on the instruction card which accompanied it as a "Flasher switch." Consequently, the fact in the instant case that the imported merchandise is denominated on its face as a "deluxe battery charger" does not *ipso facto* preclude plaintiff's contention that the article is more than rectifying apparatus.

In *Castelazo & Associates, Famous Jobbing Co., Inc.* v. *United States*, 61 Cust. Ct. 391, C.D. 3639, 294 F. Supp. 81 (1968), merchandise described as "folding shovel with pickel [pick]," so designed that it was capable of performing the functions of both a shovel and a pick, but not simultaneously, was held to be a multifunction article and therefore not classifiable under a designation (shovel) embracing only one of its two functions. The court posed the issue as follows (p. 394):

> "The question is whether such an article, adapted to distinct uses *depending upon which portion of it is activated*, is properly described by the name applicable to one of its functions. Thus posed it would appear that the weight of authority demands a negative response. [Cases cited.]" [Emphasis added.]

While the pick shovel in *Castelazo* is obviously unlike the merchandise in the present case, nonetheless there are several points of analogy: 1) The pick shovel performs interrelated but separate and distinct functions. Thus, the pick loosens the dirt so that it can be shoveled more easily. Similarly here, the battery charger and tester perform complementary and interrelated but separate functions "depending upon which portion of it is activated." 2) The shovel and pick cannot be used simultaneously; neither can the battery charger and tester be used simultaneously. 3) The pick shovel is a unitary article dependent upon a common wooden handle. Similarly, the battery charger and tester comprise a unitary article by virtue of a common housing.

In *Dollar Trading Corp.*, *supra*, the appellate court affirmed the decision of the trial court holding that drills and rasps or files were more than rotary files or rasps, and therefore not subject to classification under an *eo nomine* designation providing for only one of their functions.

See also: *United States* v. *Howard Hartry, Inc.*, 60 CCPA 140, C.A.D. 1099, 477 F. 2d 1400 (1973) (engines with transmissions more than engines); *United States* v. *New York Merchandise Co.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970) (poodle dog radios more than stuffed toy figures of animate objects); *Garrard Sales Corp.* v. *United States*, 35 CCPA 39, C.A.D. 369 (1947) (phonograph and radio when combined in a single unit constitute a separate and distinct article which is something more than either).

By contrast, in *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966), the court held that a screwdriver with a flashlight component for illumination was not more than a screwdriver due to the presence of the illuminating feature. Nevertheless, the rationale in *Astra* supports the holding here. Thus, respecting the "more than" issue, the court noted (p. 561):

> The decision in *United States* v. *A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794, cited by plaintiff, is distinguishable. In that case, the imported article contained a motor which also embodied gears and a frame which served as a housing for other parts of the floor polisher. The additional features made the article more than a special type of a motor since it formed part of the assembly of the floor polisher. *The rationale of the A. W. Fenton decision, supra, would be applicable herein if the record showed that the article had a use in addition to its use as a screwdriver.* However, plaintiff's own witness, when questioned

as to the purpose of the importation, stated, without qualification, that the article was "designed specifically to be used as an illuminated screwdriver," and "the purpose of this entire item is to be used as a screwdriver * * *."

* * * We do not believe that the additional feature of illumination transforms the basic purpose of the imported article from use as a screwdriver into some other use; *nor do we believe that the illuminating feature gives the article a use in addition to its intended use as a screwdriver.* For, illumination notwithstanding, the article remains essentially a device restricted to the use of turning screws, i.e., a screwdriver. * * * [Emphasis added.]

Significantly, the illuminated screwdriver in *Astra* performed a *single function* (turning screws), while here the CH–ACD battery chargers perform a *dual function* (testing *and* charging batteries). Stated differently, this imported merchandise has a use *in addition* to its use as a battery charger.

In summary, I am clear that no triable issue exists as to any material fact, and only a question of law is presented for determination.

To reiterate, according to the operating instructions, 1.5 volt batteries should *first* be tested to determine whether or not they are rechargeable, which prevents one from attempting to recharge "dead" or fully charged batteries. This procedure points up that there are circumstances when the testing feature would be utilized, but the charging feature would not be utilized. Additionally, the testing feature indicates whether a battery requires merely a "booster" charge or a full charge, and such feature reveals whether the recharge was effective. Thus, it is evident, that the tester and charger complement each other. Plainly, then, the testing element of the CH–ACD battery charger (which does not convert a.c. to d.c.) is indeed a highly significant feature of the article and, following the rationale of our appellate court in *Fedtro*, *supra*, makes the article something more than "rectifying apparatus." The cases relied upon by the Government, cited *supra*, have been carefully considered, but as I do not view the testing feature as merely incidental or auxiliary, those cases are not deemed controlling relative to the present merchandise. Since there is no dispute that the merchandise is electrical, it is properly dutiable under the provision in item 688.40, TSUS for electrical articles, not specially provided for, as claimed by plaintiff.

In accordance with the views expressed herein, it is hereby adjudged and ordered:

1. Plaintiff's motion for summary judgment is granted.
2. Defendant's cross-motion for summary judgment is denied.
3. The regional commissioner of customs at the port of New York is directed to reliquidate the entries covered by this action respecting

the items identified on the invoices as "Model CH–ACD Multi Purpose Deluxe Battery Charger with Silicon Diode" at the rates of 8 or 6.5 per centum ad valorem, depending upon the date of entry, pursuant to item 688.40, TSUS, as modified by T.D. 68–9.

(C.D. 4549)

NORMAN G. JENSEN AND THE YOUNG ENGINEERS, INC. v. UNITED STATES

Hardware
(*Studs and panel nuts*)

COMPONENT MATERIAL OF CHIEF VALUE—STEEL AND CADMIUM—INSUFFICIENCY OF EVIDENCE

Merchandise described as "Studs" and "Panel Nuts", imported at Los Angeles, Calif. from Japan, were classified in liquidation under TSUS item 646.42 as base metal fasteners or holders (except nuts) used with screws, bolts, or studs, and claimed by the importers to be dutiable under TSUS item 646.56 as nuts of iron or steel.

The sales manager for one of the importers testified that he had observed the manufacturing and plating operations in Japan, that the only components of the disputed articles consist of steel and a cadmium plating, that the plating weighs only one-hundredth of one percent of the weight of the fastener and exists in the form of a film of approximately one ten-thousandths of an inch, and that although he was familiar with prices paid by his firm for the plated fasteners during the period of exportation involved he was not familiar with the cost of plating the fasteners in Japan. He stated that the only way the chemical components of the merchandise could be determined accurately would be with an analysis; that he had certificates of analysis in his files but not in court.

Held, the evidence fails to establish the component material of chief value in accordance with settled rules and judicial precedents. The court is not at liberty to speculate under the shelter of the *de minimis* rule in view of the limitations imposed in General Headnotes and Rules of Interpretation, TSUS, No. 9, paragraph (f).

Court No. 69/36576 and Court Nos. 69/20013, etc.

Port of Los Angeles

[Dismissed.]

(Decided June 20, 1974)

Stein & Shostak (*James F. O'Hara* of counsel) for the plaintiffs.
Carla A. Hills, Assistant Attorney General (*Patrick D. Gill* and *Andrew P. Vance* trial attorneys), for the defendant.

RICHARDSON, Judge: The merchandise in these cases which were tried jointly is described on the invoices as "Studs" [69/36576] and as "Self-Locking Pannel Nut" [69/20013]. The merchandise was exported from Japan between March 1968 and October 1969 and classified in liquidation upon entry at the port of Los Angeles, California under TSUS item 646.42 as base metal fasteners or holders (except nuts) used with screws, bolts, or studs, at the duty rate of 15 or 17 *per centum ad valorem*, depending upon the date of entry. It is claimed by the plaintiffs-importers that the merchandise should be classified under TSUS item 646.56 as nuts, at the duty rate of 0.2 cent per pound.

The competing tariff provisions read:

[classified]		
646.42	Cotters, cotter pins, and fasteners or holders (except nuts) used with screws, bolts, or studs, all the foregoing of base metal ----------	17% or 15% ad val.
[claimed]	Bolts, nuts, studs and studding, screws, and washers (including bolts and their nuts imported in the same shipment, and assembled bolts or screws and washers, with or without nuts); screw eyes, screw hooks and screw rings; turnbuckles; all the foregoing not described in the foregoing provisions of this subpart, of base metal: Of iron or steel:	
* * *	* * * * * * *	
646.56	Nuts ----------	0.2¢ per lb.

The record before the court consists of the testimony of three witnesses and documentary and sample exhibits in the instant case, and the testimony of two witnesses and documentary and sample exhibits in *The Young Engineers, Inc.* v. *United States*, 67 Cust. Ct. 190, C.D. 4272 (1971), the record in which case is incorporated into the instant case.

In C.D. 4272 the merchandise, described as "self-locking pannel [sic] nuts", was classified under TSUS item 646.42 as fasteners and claimed by the plaintiff to be properly classifiable under item 646.56 as nuts of iron or steel. The evidence in the case established that the merchandise was fabricated from carbon steel and finished with a cadmium plating. However, as there was no evidence in the case bearing on the value of the component materials the majority of the court was of the opinion that the court could not determine that steel was the component material of chief value as contended for by the plaintiff, and, accordingly, overruled the protest.

The instant case purports to be a retrial of the issue in C.D. 4272 at least to the extent of merchandise described as panel nuts. Additionally, evidence has been presented in the instant case concerning merchandise described as studs which is shown on the invoice in Court No. 69/36576. In this regard there is testimony to the effect that the studs are actually nuts and not studs (of a variety other than panel nuts) because they are threaded internally, are made to Boeing Aircraft Company's design specifications, and find use in fastening seats to he C-track on the floor of the aircraft. And the primary question before the court with respect to the "studs" as well as with respect to the "panel nuts" is whether these articles are in chief value of iron or steel so as to require further consideration by the court of plaintiffs' claim for classification of the articles under item 646.56.

On the component material of chief value issue the testimony in the instant record of Stanley R. Jones, sales manager for The Young Engineers, Inc., is pertinent.

Mr. Jones, who previously testified in C.D. 4272, testified herein that he was familiar with the merchandise at bar as a result of having observed its manufacture in Japan on one occasion and having observed the plating operation on numerous occasions, that the only components of the subject merchandise are a low carbon steel and a cadmium plating, that he did not know the relative weights of these components in the articles except that in no case does the weight of the cadmium exceed one-hundredth of one percent of the weight of the nut (R. 13), that the cadmium is present in a very thin film, approximately one ten-thousandths of an inch thick (R. 22). He stated that the only way the chemical components of the merchandise can be determined accurately would be with an analysis, and purchasers normally get a certificate of analysis; that he had certificates on the merchandise in his files, but not in court (R. 37–38). Although he is familiar with the prices which his firm paid the Japanese suppliers during the years 1968 and 1969 for the imported cadmium plated panel nuts he is not familiar with the cost of plating the nuts in Japan nor the price of the other component in the nuts, steel (R. 30).

The foregoing comprises the substance of the evidence bearing on the issue of component material of chaief value. Plaintiffs contend that the evidence establishes that the cadmium film which coats the steel nuts at issue is so *de minimis*, so inconsequential, that it could not represent the component material of chief value, citing *Broadway-Hale Stores, Inc.* v. *United States*, 63 Cust. Ct. 194, C.D. 3896 (1969); *Morris Friedman & Co.* v. *United States*, 56 Cust. Ct. 21, C.D. 2607 (1965); and *John S. Connor, Inc.* v. *United States*, 54 Cust. Ct. 213, C.D. 2536 (1965). And defendant contends that the testimony of the

witness Jones is not *prima facie* evidence of the component material in chief value, citing *Rudolph Miles* v. *United States*, 64 Cust. Ct. 151, C.D. 3974 (1970), and *Orazio J. Freni, etc.* v. *United States*, 60 Cust. Ct. 319, C.D. 3375, 283 F. Supp. 89 (1968).

In C.D. 3896, cited by the plaintiffs, the merchandise was place mats woven of a cellophane-like material and red yarn which was classified under paragraph 1529 of the 1930 Tariff Act as modified by T.D. 54108 and claimed to be classifiable under paragraph 31(b) of that act as modified by T.D. 52739 and T.D. 54108 as articles in chief value of cellophane. In rejecting the claimed classification the court, after stating the general rule for ascertaining component material of chief value and exceptions to the rule and citing cases supporting the rule and exceptions, stated:

> In the instant case there is not a scintilla of evidence as to the value of the materials at the time they were ready for assembling into the complete article. There is no testimony establishing which component material is of chief value. An examination of the sample does not disclose it. The sample is made of yarn and cellophane material in substantial amounts. . . .

In C.D. 2536, cited by the plaintiffs, merchandise consisting of spinning wheel planters composed of wood and bamboo parts was classified under paragraph 409 of the 1930 Tariff Act as modified by T.D.'s 53865 and 53877 as articles not specially provided for, partly manufactured of bamboo, and claimed by the importer to be properly classifiable under paragraph 412 of that act as modified by T.D.'s 52373 and 52476 as manufactures of which wood is the component material of chief value, not specially provided for. The court, noting the absence of testimony establishing wood as the component material of chief value, nevertheless concluded that wood was the component material of chief value upon the court's own inspection of a sample of the merchandise, and went on to sustain the importer's claim through application of the *de minimus* rule to the minute bamboo portion of the article.

In C.D. 2607, cited by the plaintiffs, imported whisky cup candles composed of ceramic earthenware, paraffin wax, a wick, and paint were held to be articles in chief value of earthenware as claimed under paragraph 211 of the 1930 Tariff Act as modified by T.D.'s 51802, 53857, and 53877 based in part upon the court's examination of a sample of the merchandise and its consequent rejection of the wax, wick, and paint as components in chief value.

In C.D. 3974, cited by the defendant, the merchandise consisted of painted figures in the form of replicas of a choir boy and a girl composed of celluloid, cardboard, and laced material, and celluloid, cardboard, and twined cord, which was classified as dolls under TSUS

item 737.20. The court rejected the importer's claim for classification of the articles under TSUS item 256.75 as articles of papier-mache after the court's examination of the articles failed to disclose the component material of chief value, the plaintiff having offered no evidence that papier-mache was the component material of chief value. The court said:

> . . . Manifestly, examination of the samples does not make it plainly evident that papier-mache is the component material of chief value. . . .

In C.D. 3375, cited by the defendant, merchandise consisting of a fabric-coated rubber mat, rectangular in shape, in which metal brushes were set was classified as brushes, without handles, other, under TSUS item 750.70, and claimed, among other things, to be classifiable under TSUS item 386.50 as articles of cotton. The case was submitted upon a sample exhibit and a stipulation to the effect that after importation handles are attached to the articles and they are used in grooming pets, primarily dogs. The court held that the plaintiff had failed to establish that the importations were articles of cotton, the court rejecting statements appearing on the commercial invoice and special customs invoice prepared by the shipper to the effect that the articles were manufactures of cotton not specially provided for. The court said:

> . . . The burden is on plaintiff to prove the component of chief value of an article; it is not a matter for speculation by the court. . . .

From a study of the foregoing cases which have been called to the court's attention, among others, by counsel, it is clear that each case presenting the issue of component material of chief value must be decided upon the basis of its own developed facts. In the instant case there is no evidence before the court of the *costs* of the component materials *to the manufacturer* at the time they were ready to be assembled into the imported fasteners. The witness Jones is not connected with the manufacturer, and his testimony relating to the cost of plating was directed to his firm's plating costs and not to the manufacturer's plating costs. Moreover, the court's own inspection of the plated fasteners (panel nuts) depicted in exhibits 1A and 1B of the incorporated case record and of the unplated fasteners (panel nuts) depicted in collective exhibit 1 in the instant record fails to shed any light on the relative costs of the component materials involved.

The *de minimis* rule does not appear to be applicable to instant facts. The tariff schedules definitions [of words used between the descrip-

tion of an article and a material] indicate that the *de minimus* rule is intended to apply where the *interim* words employed in the tariff provisions are "wholly of", "in part of", or "containing", and do not apply where component material of chief value must be proven. See paragraph (f), No. 9—Definitions, General Headnotes and Rules of Interpretation, TSUS. And no such *interim* words appear in the inferior heading governing item 646.56 relied upon here by the plaintiffs.

Although the plating metal may be present in the disputed articles in small quantities, it cannot be determined from this record whether or not it has a greater value than the stock metal of which the body of the articles is composed. *Cf. Hirsch & Co. et al.* v. *United States*, 4 Ct. Cust. Appls. 82, 83, T.D. 33365 (1913), involving strip steel nickel plated wherein the plating was shown to be more valuable than the underlying body metal of the imported article. For the court to attempt to ascertain the relative values of the components in question in this case, on the basis of the evidence adduced on the record, would lead into prohibited speculation. As such, the court agrees with the defendant when it says in its brief (p. 32): "Even assuming, *arguendo*, that it had been definitively shown that the rate of disproportion in the *amount* of cadmium as compared to the *amount* of steel is 'enormous,' this evidence in no way establishes the component of chief *value*. The correlation is *prima facie* defective."

It follows that inasmuch as the plaintiffs have failed to establish the component material of chief value in this case, it becomes unnecessary for the court to consider any other aspect of the case. These actions must be dismissed for failure of proof.

Judgment will be entered herein accordingly.

Reviews

(A.R.D. 320)

UNITED STATES *v.* DANA PERFUMES CORP.

Toilet preparations

An appraisement for cost of production utilizing general expenses for the identical merchandise for domestic consumption is erroneous. *United States* v. *C. J. Tower & Sons of Buffalo, Inc.*, 60 CCPA 46, C.A.D. 1079, 470 F.2d 1393 (1972), and cases cited therein.

The statutory language contained in section 402a(f), Tariff Act of 1930, as amended, requires proof. The actual cost of production figures and the stipulated method utilized in appraisement are not a substitute for such proof.

APPLICATION FOR REVIEW OF REAPPRAISEMENT DECISION 11742

Reappraisement R68/1631

Entered at New York, N.Y.
Entry No. 1015319.

Second Division, Appellate Term

[Reversed and remanded.]

(Decided January 30, 1074)

Irving Jaffe, Acting Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the appellant.
Barnes, Richardson & Colburn (*Hadley S. King* of counsel) for the appellee.

Before RAO, FORD, and NEWMAN, Judges

FORD, Judge: The instant application was filed by the Government for a review of the decision and judgment of a trial judge sitting in reappraisement reported in *Dana Perfumes Corp.* v. *United States*, 66 Cust. Ct. 568, R.D. 11742 (1971), wherein appellee's claimed dutiable value was sustained. The merchandise is described on the invoice

as Canoe cologne No. 8228. Such merchandise having been set forth on the final list, T.D. 54521, was subject to appraisement under section 402a, Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, and specifically under section 402a(f), cost of production, and was appraised at 3.40 French francs, plus packing.

Appellee does not dispute the basis of appraisement but contends the proper dutiable value should be 2.43 French francs, net packed. The difference in the values is based upon the amounts utilized for general expenses and profit as prescribed in section 402a(f), *supra*.

The pertinent statutory provisions involved provide as follows:

Section 402a(f), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

> (f) COST OF PRODUCTION.—For the purpose of this title the cost of production of imported merchandise shall be the sum of—
>
> (1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;
>
> (2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;
>
> (3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and
>
> (4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

The record consists of a stipulation of the parties received in evidence as plaintiff's exhibit 1, two documentary exhibits received as exhibit 2 and collective 3, the testimony of the import specialist, and the incorporation of the record in *Gehrig Hoban & Co., Inc.* v. *United States*, 57 Cust. Ct. 727, A.R.D. 210 (1966).

The stipulation, plaintiff's exhibit 1, reads as follows:

> (1) That this appeal is limited to the merchandise described on the invoices as "Canoe Cologne 3 11/16 oz., No. 8228" and is abandoned as to all other merchandise.

(2) That the said cologne was entered, or withdrawn from warehouse, for consumption after the effective date (February 27, 1958) of Section 6(a) of the Customs Simplification Act of 1956; and is identified on the Final List (T.D. 54521) published by the Secretary of the Treasury in accordance therewith, as "Perfumery, including cologne and toilet waters, containing alcohol"; that the said merchandise was accordingly appraised under the provisions of Section 402a of the Tariff Act of 1930 as amended by the Customs Simplification Act.

(3) That the merchandise was appraised under statutory cost of production as defined in Section 402a(f), Tariff Act of 1930 as amended; that neither party challenges the said basis of appraisement.

(4) That during all relevant times prior to the exportation of the instant merchandise, identical merchandise produced by the manufacturer herein, Parfums Dana S.A.R.L., Neuilly-sur-Seine, France, was offered for sale for domestic consumption in France as "Canoe Cologne No. 228."

(5) That the appraised cost of production under said Section 402a(f) was computed in the following manner, in French francs per bottle:

(a)	Materials, fabrication, manipulation and other processing, section 402(f)(1)	0.66
(b)	General expenses, Section 402a(f)(2)	1.07
(c)	Total of (a) and (b)	1.73
(d)	Profit, section 402a(f)(4)	1.67
(e)	Total, excluding packing	3.40
(f)	Packing, section 402a(f)(3)	as invoiced

(6) That the amount for materials, fabrication, manipulation and other processing stated in Paragraph 5(a) above represents the appraiser's determination of the actual cost of materials, fabrication, manipulation, and other processing, as such terms are used in Section 402a(f)(1), when producing the involved Canoe Cologne No. 228 for exportation to the United States.

(7) That the amount for general expenses stated in Paragraph 5(b) above was derived by the appraiser by multiplying the said figure of 0.66 French francs for materials, fabrication, manipulation and other processing, set forth in Paragraph 5(a) above, by 161.9%; that the said factor utilized by the appraiser of 161.9% in deriving the general expenses represents the amount added by the manufacturer for general expenses when producing identical merchandise referred to in Paragraph (4), above for sale in the French domestic market.

(8) That the amount for profit specified in Paragraph 5(d) above of 1.67 French francs was derived by the appraiser by multiplying the total of materials, fabrication, manipulation and other processing, plus the general expenses, such total as specified in paragraph 5(c) above, by 96.7%, based upon the profit actually realized on sales by the manufacturer when producing for expor-

tation to the United States; that plaintiff does not dispute that the said factor of 96.7% is the correct percentage to be added for profit to the total of materials, fabrication, manipulation and other processing, plus usual general expenses, as determined by the court.

(9) That the appraiser's determination of the said amount for profit of 96.7% was arithmetically derived from his determination of the actual cost of production of the involved merchandise when producing said identical cologne during 1966 for exportation to the United States, as follows (in French francs per bottle):

Canoe Cologne No. 8228

Materials, Fabrication, Manipulation and other Processing	General Expenses	Profit	Cost of Packing	Total Net Cost
0.66	0.56	1.18	0.03	2.43

(10) That this stipulation may be received in evidence herein as plaintiff's exhibit 1.

Import specialist, Price, identified plaintiff's exhibit 2 as an affidavit of Jacques Paligot, which was produced pursuant to a subpoena duces tecum and received for the purpose of establishing receipt of the document. Plaintiff's collective exhibit 3, a letter indicating enclosure of plaintiff's exhibit 2 together with a schedule containing elements of costs, was the only information he had before him at the time the advisory appraisement was made by him. Parties stipulated that the advisory appraisement was adopted as the appraised value.

According to the schedule attached to the affidavit of Jacques Paligot (exhibit 2), which was before the appraiser at the time of appraisement, and the stipulation, it appears that—

(1) the cost of production in French francs per bottle of identical merchandise sold for home consumption in France was alleged to be:

Materials & Fabrication	Usual General Expenses (overheads)	Profit	Packing Expenses	Total Net
1.76	2.85 [161.9% of 1.76]	0.95	0.03	5.59

(2) the cost of production in French francs per bottle of the merchandise exported to the United States was alleged to be:

Materials & Fabrication	Usual General Expenses (overheads)	Profit	Packing Expenses	Total Net
0.66	0.56	1.18 [96.7% of 0.66+0.56]	0.03	2.43

The merchandise was appraised as follows:

Materials & Fabrication	Usual General Expenses	Profit	Total	Packing
0.66	1.07 [161.9% of 0.66]	1.67 [96.7% of 0.66+1.07]	3.40	as invoiced

The trial court was correct in holding that the amount utilized by the appraising official for general expenses was improper. The percentage of general expenses based upon the actual expense for the production of identical merchandise for sale in the domestic market as set forth in paragraph 7 of the stipulation is not in accordance with the well-settled principle of law which requires under these circumstances the cost for producing the article for export not domestic consumption. *United States* v. *C. J. Tower & Sons of Buffalo, Inc.*, 60 CCPA 46, C.A.D. 1079, 470 F.2d 1393 (1972), and cases cited therein. Since the appraiser's general expense figure is erroneous, the profit figure is also erroneous.

Notwithstanding the fact that the appraising officer has the actual cost of production figures for export to the United States and his method of appraisement is set forth in the stipulation, it is not a substitute for the proof required under section 402a(f). The statutory provisions for general expenses and profit utilize language requiring proof. Actual expenses and profit may of course be utilized where the evidence establishes facts such as, no other manufacturers, failure on part of other manufacturers to maintain records, refusal of manufacturers to disclose such information and costs not incurred for domestic consumption but involved for export, etc. *United States* v. *Henry Maier*, 18 CCPA 409, T.D. 44679 (1931); *United States* v. *Jovita Perez*, 36 CCPA 114, C.A.D. 407 (1949); *United States* v. *Henry Maier*, 21 CCPA 41, T.D. 46378 (1933); *United States* v. *Berben Corporation*, 49 Cust. Ct. 497, A.R.D. 147 (1962); *Oscar E. Eggen* v. *United States*, 57 Cust. Ct. 736, A.R.D. 212 (1966), *aff'd*, 55 CCPA 95, C.A.D. 939 (1968); *Kay Pee Import Export Co.* v. *United States*, 56 Cust. Ct. 696, R.D. 11164 (1966); *A. N. Deringer, Inc.* v. *United States*, 53 CCPA 135, C.A.D. 890 (1966).

Appellant contends, and correctly so, that the record is barren of evidence which would establish the usual general expenses of such or similar merchandise. The record also does not contain evidence which would show a profit "equal to the profit which is ordinarily added, in the case of merchandise of the same general character * * * by manufacturers or producers in the country of manufacture or production

who are engaged in the production or manufacture of merchandise of the same class or kind."

In the absence of evidence which would permit the use of actual costs, the importer must establish by credible evidence the required statutory information. The fact that the appraiser, in determining profit, utilized the general expense figure derived from the actual cost of production figures for export sales does not establish that figure as the "usual general expenses" as required by section 402a(f)(2) since it represents the actual general expenses for export. See *United States* v. *Control Data Corporation*, 69 Cust. Ct. 274, A.R.D. 310, 352 F. Supp. 1392 (1972) (opinion by Newman, J., points 2 and 3), appeal pending.

In view of the disparity between the general expenses attributed to cost of production in the home market and that for export, an explanation or accounting therefor or other evidence establishing that the claimed figure represents the usual general expenses for such or similar merchandise is required. Such evidence is lacking and since the appraised value relating to general expenses was arrived at contrary to law, the court therefore reverses the decision of the trial court and remands the matter for further evidence which would permit a proper finding of value of cost of production.

Judgment will be entered accordingly.

Rules

(C.R.D. 74–1)

NADEL & SONS TOY CORP. ET AL. *v.* UNITED STATES

Opinion and Order on Defendant's Motion To Dismiss for Lack of Prosecution

Court Nos. 66/55028, etc.

[Motion denied on condition; otherwise granted.]

(Dated January 21, 1974)

Serko & Sklaroff for the plaintiffs.

Irving Jaffe, Acting Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to dismiss these 23 actions for lack of prosecution. The basis of defendant's motion is that these suits were not removed from the October 1970 reserve file within the two-year period provided by rule 14.6(c), and accordingly should be dismissed for lack of prosecution pursuant to rules 8.3(b)(1) and 14.6(c).

Pursuant to rules 14.6(a) and 14.9(c), effective October 1, 1970,[1] these cases were among approximately 177,000 actions pending before the Customs Court which were placed in a classification designated as the October 1970 reserve file. Under rule 14.6(c) a period of two years, to and including October 31, 1972, was allowed during which time pending suits might be removed from the reserve file, or they would be dismissed automatically by the clerk for lack of prosecution upon the expiration of the time provided. Under rule 14.6(b) an action could be removed from the October 1970 reserve file by filing a complaint. It appears that on October 30 and 31, 1972 complaints were filed in all these cases, except in Court No. 69/19366.

Court No. 69/19366 was in the suspension disposition file, rather than in the reserve file; and inasmuch as that case was not removed

[1] October 1, 1970 is the effective date both of the Customs Courts Act of 1970, Pub. L. 91–271, and the present court rules.

from the suspension disposition file within the period of time fixed by the court, the case is now in the process of automatic dismissal by the clerk pursuant to the provisions of rule 14.8(c).[2] Hence, as to Court No. 69/19366, defendant's motion is moot and therefore is denied.

Concerning the other 22 cases, in which complaints have been filed, defendant contends that the merchandise described in the complaints is not embraced by the protests. An examination of these protests confirms defendant's contention.[3]

Fundamentally, this court has jurisdiction only of the merchandise embraced by the protests; it follows that the complaints filed under rule 4.4 may not include goods not originally involved in the protests. *Superscope, Inc.* v. *United States*, 71 Cust. Ct. 301, C.R.D. 73-37 (1973); also cf. *Distributors Import Co.* v. *United States*, 71 Cust. Ct. 298, C.R.D. 73-35 (1973). However, it has been held that a complaint which refers to merchandise not covered by the protest may, if permitted by the court, be amended to conform to the scope of the protest. *Superscope, Inc., supra.* Consequently, I conclude that these cases have been in fact and law removed from the October 1970 reserve file pursuant to rule 14.6(b) by the filing of complaints, albeit defective respecting the merchandise covered thereby. Furthermore, I see no serious prejudice to defendant if plaintiffs are given an opportunity to file amended complaints to correct the defect complained of.

Accordingly it is hereby ORDERED:

1. Defendant's motion to dismiss Court No. 69/19366 is denied, as moot.

2. a. Defendant's motion to dismiss the remaining 22 actions for lack of prosecution is denied at this time.

b. Plaintiffs shall have a period of thirty days from and after the date of service of this order within which to file 22 amended complaints, each complaint covering only the merchandise referred to in each of the protests.

c. If upon the expiration of said thirty-day period no such amended complaints shall have been filed by plaintiffs, these 22 actions shall be dismissed for lack of prosecution, without any further proceeding. In such event, the clerk is directed to enter an order of dismissal without further order.

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[2] Rule 14.8(c) provides:

"(c) Dismissal for Lack of Prosecution: An action which is not removed from the suspension disposition file within a fixed period of time shall be dismissed for lack of prosecution, and in the absence of the filing of a motion under paragraph (e) of this rule the clerk shall enter an order of dismissal without further direction of the court. * * *"

[3] The complaints refer to "mustaches, masks and disguise sets with or without other words of description". The protests, however, cover a diversity of other articles, but do not include the merchandise described in the complaints.

(C.R.D. 74-2)

TEXAS MEX BRICK & IMPORT CO. *v.* UNITED STATES

Opinion and Order on Defendant's Motion To Dismiss and Plaintiff's Cross-Motion To Correct Filing Date on Summons

Court No. 73-8-02236

[Motion to dismiss denied; cross-motion to correct records of clerk granted.]

(Dated January 30, 1974)

Stein & Shostak (*Marjorie M. Shostak* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

NEWMAN, Judge: This is a civil action brought by plaintiff pursuant to 28 U.S.C. § 2632(a) to contest the denial of a protest.[1]

Defendant has moved to dismiss the action on the ground that it was not filed within the time prescribed by § 2631(a)(1);[2] plaintiff has interposed a cross-motion pursuant to rules 3.2(d)(2) and 3.2(d)(3)[3] to correct the records of the clerk of the court, including the date of filing stamped on the summons. In opposition to plaintiff's cross-motion, defendant contends that rule 3.2(d)(3) is "*ultra vires*" and

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[1] Section 2632(a) provides:

"(a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court".

[2] Section 2631(a)(1) provides:

"(a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:

"(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *".

[3] Rule 3.2(d) provides:

"(1) The records of the clerk, including the date of filing stamped on the summons, shall be final and conclusive evidence of the date on which a summons was filed unless a motion to correct the record is made and granted pursuant to subparagraph (2) of this paragraph (d).

"(2) A party who contends that the effective filing date of a summons should be a date other than the dates shown in the records of the clerk may seek a corrective order by motion made pursuant to Rule 4.12, and the court may, upon satisfactory proof that the records of the clerk with respect to the filing date were incorrect, order the record corrected.

"(3) When a summons is received through the mail by the clerk after the last date allowed by a statute of limitations for the commencement of an action, the court may, upon motion made pursuant to subparagraph (2) of this paragraph (d), order the summons to be deemed to have been filed on the last date allowed if it is shown upon satisfactory proof: that the summons was sent by registered or certified mail, properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with return receipt requested; that it was deposited in the mail sufficiently in advance of the last date allowed for filing to provide for receipt by the clerk on or before such date in the ordinary course of the mail; and that the person sending the summons exercised no control over the mailing between the deposit of the summons in the mail and its delivery".

unconstitutional.[4] Defendant's contention raises an issue of first impression in this court. I have concluded that defendant's motion to dismiss should be denied; and plaintiff's cross-motion to correct the filing date of the summons should be granted.

I.

Affidavits submitted by plaintiff in support of its cross-motion establish the following facts, which are not in dispute:

The summons was placed in an envelope properly addressed to the clerk of the court. That envelope was deposited on Friday, August 3, 1973 before 1:00 p.m. in the postal receptacle for metered mail in the mailroom at 3435 Wilshire Boulevard, Los Angeles, California. Such postal receptacle bears a sign indicating that mail is removed therefrom daily, Monday through Friday, at 8:10 a.m., 1:00 p.m., 4:00 p.m., 4:35 p.m. and 5:35 p.m. The proper amount of postage was affixed to the envelope for mailing, via certified air mail, with return receipt requested. Air mail service to New York from Los Angeles normally takes two days. Hence, the posting of the summons on Friday, August 3, 1973 was sufficiently in advance of Monday, August 6, 1973, the last day for timely filing of the summons, to have reached the clerk's office by the last day in *the "ordinary course" of the air mail.* No control was exercised by the sender over the mailing of the summons between its deposit in the mail and its late delivery on Tuesday, August 7, 1973. In short, plaintiff has complied with all the mailing requirements specified in rule 3.2(d)(3).

The summons was stamped "RECEIVED" and "FILED" August 7, 1973 by the clerk; and a photostatic copy of the return receipt, submitted by plaintiff, shows delivery by the post office on August 7, 1973.

II

It is, of course, fundamental that timely filing of a summons is a jurisdictional condition for bringing a civil action in this court, and such a condition must be strictly observed.[5] Cf. *Soriano* v. *United*

[4] A recent application by defendant for a three-judge panel pursuant to 28 U.S.C. § 255 and rule 4.13 was denied by Chief Judge Nils A. Boe in an unpublished order, entered January 3, 1974. Defendant's application was predicated on the grounds "that the subject proceedings raise (1), an issue of the constitutionality of a Rule promulgated by this Court and (2), issues of broad or significant implications in the judicial administration of the customs laws".

[5] Prior to the Customs Courts Act of 1970, P.L. 91-271, the timely filing of a protest was a condition precedent to this court's jurisdiction. *James Akeroyd & Son* v. *United States*, 19 CCPA 249, T.D. 45341 (1931); *United China & Glass Co.* v. *United States*, 66 Cust. Ct. 207, 211-12, C.D. 4191 (1971); *W. A. Gleeson* v. *United States*, 62 Cust. Ct. 740, C.D. 3857 (1969), *aff'd* 58 CCPA 17, C.A.D. 998, 432 F.2d 1403 (1970); *Slazengers, Inc.* v. *United States*, 39 Cust. Ct. 142, C.D. 1919, 158 F. Supp. 726 (1957); *State Distributing Co.* v. *United States*, 22 Cust. Ct. 302, Abstract 53105 (1949).

States, 352 U.S. 270 (1957). Thus, contends defendant, inasmuch as plaintiff did not file its summons within the 180-day limitation period imposed by § 2631(a)(1), the action must be dismissed for lack of jurisdiction.

Further, respecting plaintiff's cross-motion, defendant asserts that rule 3.2(d)(3) "constitutes an unconstitutional and *ultra vires* exercise of this Court's judicial power; to wit, * * * this Court, through its promulgation of Rule 3.2(d)(3), has, without lawful authority, provided for an enlargement of the period within which the Congress has provided that an action may be commenced against the United States in this forum".[6]

Plaintiff, on the other hand, urges that pursuant to rule 3.2(d)(3) this action was filed in compliance with the statute of limitations, and as indicated above, asks that the records of the clerk, including the date of filing stamped on the summons (August 7, 1973), be corrected to show timely filing (August 6, 1973).

In reply to defendant's contention that rule 3.2(d)(3) is invalid, plaintiff insists "that Rule 3.2(d)(3) is clearly a proper exercise of the statutory, rule-making authority specifically granted to this Court by Congress in 28 U.S.C. § 2632(a), as amended. * * * The authority thereby granted to the Customs Court is clearly sufficiently broad in its scope to include the promulgation of the special provisions of Rule 3.2(d)[(3)]".

III

The issue presented, then, is whether a summons *received* after the expiration of the period prescribed by § 2631(a)(1) may, within the scope of the court's authority to adopt rules, be deemed to have been timely *filed*.

Generally, a summons or other paper is "filed" when it is *received* by the court. *Andrew Dossett Imports, Inc.* v. *United States*, 69 Cust. Ct. 334, C.R.D. 72-26, 351 F. Supp. 1404 (1972). However, rule 3.2(d)(3) provides, in effect, that a summons "received" after the expiration of the filing period specified in § 2631(a)(1) may be deemed to have been timely "filed" if such summons was mailed in the manner prescribed.[7] Therefore rule 3.2(d)(3), in effect, creates an exception to the general rule that a summons is filed upon receipt, and provides instead that the summons is deemed filed on the last date allowed for

[6] Defendant does not dispute the validity of rule 3.2(d) insofar as it authorizes the correction of a clerical error in stamping an inaccurate filing date on a summons.

[7] Such rule is analogous in its purpose to United States Supreme Court Rule 22(2), 28 U.S.C., as amended, which provides that petitions for a writ of certiorari to review the judgment of the court of appeals in a criminal case "shall be deemed filed in time if mailed by air-mail under a postmark dated within the thirty-day period or due extension thereof" if the original judgment in such case was entered in a district court in Alaska, Guam, Hawaii, Puerto Rico, the Virgin Islands, or the Canal Zone.

commencing an action. I am clear that this court has authority to explicitly provide that something other than receipt may constitute the filing of the summons, particularly since under § 2632(a) Congress specifically authorized this court to adopt rules governing the "manner" of filing a summons.

While rule 3.2(d)(3) plainly contemplates *receiving* a summons after the expiration of the statutory filing period (if mailed in the prescribed manner), such rule does not purport to extend the statutory period for *filing* a summons, since if the requisites of mailing are complied with, the summons is deemed timely filed (viz., on the last date allowed under § 2631(a)(1)). Thus, the rule merely purports to make reasonable provision for delays in the *receipt* of summonses sent through the mail, not delays in *filing* summonses.

In *Charlson Realty Company* v. *United States*, 384 F. 2d 434, 445 (Ct. Claims, 1967),[8] the Court of Claims enunciated the rationale justifying a rule such as 3.2(d)(3):

> The Court of Claims is a national court and receives petitions from all parts of the country. It is the almost universal practice of litigants and lawyers residing outside of the Washington area to send their petitions to the court by United States mail. It is impossible for them to know exactly what day or hour a petition will actually arrive at the court. All that they can do is mail their petitions in time to arrive at the court in due course of the mails, or journey to Washington and deliver them in person to the clerk. The latter course is far too expensive, time-consuming, and inconvenient to be expected of them. * * *

Also apropos are the observations of Senior Judge Jones in his concurring opinion in *Charlson* (at pp. 446–447):

> The principle had already been established that if mailed in time to reach destination in the normal course of transmission before the expiration of the limitation period, the court may, if in its judgment the facts of the case justify such action, conclude that the filing papers arrived at the court within the prescribed time. There is every reason to apply the principle enunciated by

[8] In *Charlson*, the petition initiating the action was, as the summons here, sent to the court via the mail and stamped as filed one day after the applicable statute of limitations had expired. Nevertheless, the Court of Claims held that the petition was received through the mail before the expiration of the limitation period on the basis that a letter which is properly sealed, stamped, addressed and deposited in the United States mail is presumed to have been received by the addressee in the due course of the mail. In our case, however, plaintiff does not claim that the summons was *received* by the court within the 180-day filing period, but on the contrary concedes that the summons was *received* "after the last date allowed by the statute of limitations for the commencement of an action", as provided in rule 3.2(d)(3). Consequently, on the facts and issue presented, *Charlson* is perhaps distinguishable from the present case.

But I wish to stress that I am in total agreement with the rationale of *Charlson*; and indeed, I would reach the same conclusion here were there no *Charlson* case or "Charlson Rule" (see *infra*).

the *Arkansas Motor Coaches* decision to the situation in the instant case. *The prior ruling by the circuit court in the Arkansas Motor Coaches case merely puts the local litigant and the out-of-town claimant on a more nearly even basis, and removes at least a part of the discrimination against the out-of-town claimant*

This rule is especially important in the United States Court of Claims which has national jurisdiction. The commissioners are sent all over the United States to conduct trials for the convenience of litigants, but the court's situs is Washington, D.C. *The mailing privilege is especially needful for Pacific coast litigants, 3,000 miles away*, and for people in Hawaii and Alaska who are several thousand miles farther away. *Why should they have their limitation period shortened several days as against litigants living near Washington, D.C.?* Many of the Government installations are on the coast. Manifestly, it is impractical to get on the train or plane and carry the document to Washington, D.C., at great expense. [Emphasis added.]

This court, like the Court of Claims, has national jurisdiction, and parties invoking Customs Court jurisdiction necessarily depend greatly upon the mail for the service and filing of papers. Hence, it is indeed appropriate that this court has promulgated a rule very similar to rule 21(b)(2)(iii) of the Court of Claims.[9] Significantly, the Court of Claims promulgated this rule as a result of *Charlson*, which rule, in point of fact, is known as the "Charlson Rule". See Rules of the United States Court of Claims, Index at page 174. And significantly, too, the Customs Court adopted the "Charlson Rule" with minor changes in language to conform to our practice.

Parenthetically, looking back nostalgically to the halcyon days of college and law school, I was employed for a few years by the United States Post Office, and observed at firsthand the peripatetic adventures of a letter from mailing to delivery. I wish to observe that nothing in the expertise so gained can serve to change my findings relative to the justification for a rule such as this court's rule 3.2(d)(3).

In sum, I hold that rule 3.2(d)(3) is within the scope of the court's authority to adopt rules; and that such rule does not conflict with, abrogate, or extend the 180-day time period specified by 28 U.S.C. § 2631(a)(1) for the commencement of an action by filing a summons.

[9] Rule 21(b)(2)(iii) of the Court of Claims provides:

"(iii) In a situation where a petition is stamped by the clerk after the last date allowed by a statute of limitations for the filing of the petition, if the petition was received by the clerk through the mail, it may, by order of the court, upon motion of the party plaintiff, be deemed to have been filed on the last date allowed if there is a proper showing (a) that the petition was sent by registered mail, properly addressed to the clerk of the court at 717 Madison Place N.W., Washington, D.C. 20005, and with return receipt requested, (b) that it was deposited in the mail sufficiently in advance of the last date allowed for filing to provide for receipt by the clerk on or before such date in the ordinary course of the mail, and (c) that the party plaintiff as sender exercised no control over the mailing between the deposit of the petition in the mail and its delivery".

No cases have been called to my attention challenging the validity of this rule, and independent research reveals none.

IV

We now reach the question of whether plaintiff has complied with the terms and conditions of rule 3.2(d)(3). As mentioned before, the facts stated in the moving affidavits submitted by plaintiff are not controverted in any manner by defendant. The affidavits establish that in *the ordinary course of the mail*, the summons would have reached the court on Monday, August 6, 1973. Moreover, in *American Import Company* v. *United States*, Court No. 71-6-00446 and *American Import Company* v. *United States*, Court No. 71-6-00447 (actions pending), plaintiff's motions under rule 3.2(d)(3) were granted by then Chief Judge Paul P. Rao in unpublished orders entered September 14, 1971, over defendant's objection that Friday, June 25, 1971 was not sufficiently in advance of Monday, June 28, 1971, the last date permitted for filing, to allow for timely receipt of a summons by the clerk in the ordinary course of the mail from Los Angeles. In the *American Import* cases, defendant did not question the validity of rule 3.2(d)(3), but merely disputed plaintiff's compliance with its provisions.

Under all the facts and circumstances herein, I find no difficulty in concluding that plaintiff has shown by "satisfactory proof" that it has fully complied with the terms and conditions of mailing imposed by rule 3.2(d)(3); and that the summons should be deemed filed on August 6, 1973, the last date allowed for filing in accordance with § 2631(a)(1). Accordingly, it is ORDERED:

1. Defendant's motion to dismiss is denied.

2. Plaintiff's cross-motion to correct the records of the clerk, including the date of filing stamped on the summons, is granted.

3. The summons in this civil action is deemed to have been filed on August 6, 1973; and the records of the clerk, including the date of filing stamped on the summons, shall be corrected to show the date of filing said summons was August 6, 1973.

(C.R.D. 74-3)

THE FIRESTONE TIRE & RUBBER COMPANY *v.* UNITED STATES

ON DEFENDANT'S MOTION FOR REHEARING AND PLAINTIFF'S CROSS-MOTION FOR AMENDED SUMMARY JUDGMENT

Court Nos. 72-5-01060 and 72-9-01969

[Defendant's motion for rehearing granted; plaintiff's cross-motion for amended summary judgment denied.]

(Dated March 29, 1974)

Kirkland, Ellis & Rowe (*James M. Johnstone* and *Robert D. Strahota* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

NEWMAN, Judge: The Government has moved for an order vacating the summary judgment entered herein for plaintiff on October 11, 1973 (C.D. 4474); and either entering a judgment for defendant, or alternatively restoring this action to its prior status for amendment of the pleadings and for determination of the value of certain processing which occurred in Canada, as provided in item 806.30, of the Tariff Schedules of the United States (TSUS).

Plaintiff has filed an opposition to defendant's motion and a cross-motion for an amended summary judgment supported by an affidavit and "summary sheet".

For the reasons stated, defendant's motion for rehearing is granted (upon the terms specified hereinafter), and plaintiff's cross-motion for an amended summary judgment is denied at this time.

The background of these proceedings follows:

So-called top and bottom domes for premix soda syrup containers were manufactured in the United States by a division of Firestone, and then shipped to Uniroyal, Ltd. in Montreal, Canada (Uniroyal). At Uniroyal, a shock-resistant quality was imparted to the domes by the application of a rubber coating. Thereafter, the domes were returned to Firestone in the United States for completion of manufacture.

Upon importation of the metal domes from Canada, plaintiff claimed that duty should be assessed upon only the value of the processing in Canada pursuant to item 806.30, TSUS.[1] That claim was rejected by the customs officials, and duty was assessed upon the full appraised value of the domes.

In these consolidated civil actions, plaintiff claimed that the domes were subjected to "further processing" outside the United States within the meaning of item 806.30; and under that provision the entries should have been liquidated upon only the value of the processing outside the United States, rather than upon the full appraised value of the imported articles.

[1] Item 806.30 reads as follows:

806.30	Any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing----	A duty upon the value of such processing outside the United States * * *

Plaintiff moved for summary judgment, contending that there was no genuine issue as to any material fact. Defendant cross-moved for summary judgment in its favor, agreeing with plaintiff that there was no genuine issue as to any material fact. Significantly, no question concerning the cost or value of processing in Canada was raised by either party. Indeed, the only issue argued by the parties and considered by the court was whether the domes were further processed outside the United States within the purview of item 806.30.

This court granted plaintiff's motion (C.D. 4474), finding "that there is no genuine issue of fact to be tried in this case, and that as a matter of law the articles in issue were further processed outside the United States within the purview of item 806.30, TSUS, as claimed by plaintiff"; and additionally, ordered "that the district director reliquidate the entries covered by these civil actions, and in so doing assess the appropriate rate of duty *upon the value of the processing outside the United States*, in accordance with item 806.30, TSUS". [Emphasis added.]

In its present motion, defendant now asserts that the court has made no finding or determination of the value of the processing performed on plaintiff's domes in Canada; and that "nowhere in the complaint, memorandum in support of its motion for summary judgment, or accompanying affidavits, does plaintiff allege what it considers to be the value of said further processing". Citing my recent decision in *Mobilite* v. *United States*, 70 Cust. Ct. 359, C.R.D. 73–11, 358 F. Supp. 267 (1973), defendant now insists that without such allegation concerning value and proof in support thereof, plaintiff was not entitled to summary judgment, but rather that "only partial summary judgment for plaintiff is possible on these facts".

I agree.

In *Mobilite*, after deciding that certain lamps and bulbs were not dutiable as entireties, but as separate articles, this court held that under the Customs Courts Act of 1970, P.L. 91–271, it was incumbent upon the court to judicially determine the separate values of the articles in the same proceeding.[2] It was observed (70 Cust. Ct. at 365–366):

> One of the most significant changes made in the existing procedure by enactment of the pioneering Public Law 91–271 was abolishing the remand of protests by a division of three judges to a single judge for determining value, and giving jurisdiction to single judges to hear *all* issues arising out of any entry or liquidation. Thus, in the new law Congress intended that "[t]here will be a single judicial proceeding in which all issues, including both

[2] Plaintiff had urged that the court enter a judgment dismissing the action as premature, and referring the matter to the appropriate customs officials to make valid appraisements "in accord with the judicially determined separate tariff status of the import".

appraisement and classification, will be considered". H.R. Rep. No. 91-1067, 91st Cong., 2d Sess. 11 (1970); S. Rep. No. 91-576, 91st Cong., 1st Sess. 12 (1969). See also *A. N. Deringer, Inc.* v. *United States, supra.* Granting plaintiff's request to enter a final judgment referring this matter to the customs officials, with the issue of separate values judicially unresolved, would squarely defeat Congress' manifest intent. Hence, the determination of the separate values for the lamps and bulbs remains to be judicially resolved in this case; and of course, the burden of proof respecting such issue rests upon plaintiff.

Inasmuch as the complaint in *Mobilite* did not allege the separate values of the lamps and bulbs, it was held that issue had not been joined on the ancillary value aspect of the case. Accordingly, plaintiff's motion for summary judgment was denied, and leave was granted to file an amended complaint alleging the separate values of the lamps and bulbs. Defendant was granted time after service of an amended complaint in which to file an amended answer. Since the threshold issue of entireties had been determined, and only the ancillary value issue remained, partial summary judgment was entered for the plaintiff.[3]

Although *Mobilite* was an "entireties" case, I am clear that the rationale therein requiring a determination of classification and value issues in the same civil action is fully applicable to these civil actions involving item 806.30, TSUS.

Plaintiff here contends, however, that the aggregate value of the processing in Canada ($101,137)[4] is ascertainable from the official record; that the aggregate amount of additional customs duties assessed in liquidation was $14,576.26, which additional duties were predicated solely upon the valuation by the Government of the processing in Canada; and that the "[c]ustoms authorities necessarily accepted the value of further processing as claimed by plaintiff in arriving at their determination of the full value of the entries". Plaintiff further argues that defendant "should be estopped from raising or contesting a valuation issue at this stage of the proceedings".

Defendant, on the other hand, urges that an examination of the entries reveals that the customs officials made no determination of the value of the processing in Canada; that the appraisements were made without regard to any invoiced charges for work performed, or the value of the goods exported to Canada; and that the appraisements reflect solely the value of the merchandise at the time of importation into the United States.

Thus, defendant disputes that the additional duties are attributable solely to the value of the processing in Canada, and emphasizes there has been no official finding by the customs authorities concerning the value of processing in Canada.

[3] Subsequently, the value issue was disposed of by stipulation of the parties in open court. *Mobilite, Inc.* v. *United States*, 71 Cust. Ct. 79, C.D. 4478 (1973).

[4] These two consolidated civil actions cover fourteen entries.

While the applicability of item 806.30 to the entries in this case was clearly established in the prior proceedings leading to the order in C.D. 4474, I have noted that plaintiff, unfortunately, did not allege in the complaint either its cost or the value of the processing in Canada, which are the criteria of value set forth in headnote 2(a), schedule 8, part 1, subpart B.[5] Neither is there an allegation in the complaint that the Government predicated the assessment of additional duties solely upon the value of the processing in Canada, or that the customs officials accepted the value of further processing claimed by plaintiff. Under these circumstances, I am constrained to agree with defendant that, following the rationale in *Mobilite*, only partial summary judgment could properly be entered for plaintiff. Additionally, plaintiff's contention that defendant should be estopped from raising or contesting a valuation at this stage of the proceedings is without merit.

Since the pleadings have not been addressed to the cost or value of the processing, as noted above, I deem it premature at this juncture to consider plaintiff's cross-motion for an amended summary judgment. Therefore, the cross-motion will be denied, and the affidavit and "summary sheet" submitted by plaintiff in support thereof will not be considered at this time.

In accordance with the views stated herein, it is hereby adjudged and ordered:

1. Defendant's motion for rehearing is granted.

2. The summary judgment entered for plaintiff on October 11, 1973 in C.D. 4474 is vacated and set aside.

3. Predicated upon the undisputed facts set forth in C.D. 4474, I find and hold that the domes in issue were further processed outside the United States within the purview of item 806.30, TSUS, as claimed by plaintiff, and a partial interlocutory summary adjudication in plaintiff's favor is hereby made to that effect.

4. Plaintiff's cross-motion for an amended summary judgment is denied at this time.

5. Plaintiff may file an amended complaint alleging the cost or value of the processing in Canada, said amended complaint to be filed

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[5] Schedule 8, part 1, subpart B, headnote 2(a) reads:

2. Articles repaired, altered, processed, or otherwise changed in condition abroad.—The following provisions apply only to items 806.20 and 806.30:

(a) The value of repairs, alterations, processing, or other change in condition outside the United States shall be—

(i) the cost to the importer of such change; or

(ii) if no charge is made, the value of such change,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 or 402a of this Act.

within fifteen (15) days after the service of this order. Defendant is granted fifteen (15) days after service of an amended complaint in which to file an amended answer.

(C.R.D. 74–4)

VALLEY HARDWARE SUPPLY, INC. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. 63/9283

Port of Houston on Administration

[Motion denied.]

(Dated April 3, 1974)

Stein & Shostak (*Marjorie M. Shostak* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

RICHARDSON, Judge: This is a motion by the defendant to dismiss for lack of jurisdiction, and to refer the action to an appropriate customs officer for appropriate administrative action.

In a stipulation before the Third Division by and between counsel for the respective parties, they agreed, among other things:

> "4. That the Official Court papers contain a copy of a Notice of Appraisement on Customs Form 4301, allegedly issued by the Collector of Customs under Sec. 501 of the Tariff Act of 1930, but that said copy retained in the entry file does not contain a notation of the date of delivery thereof to the importer, consignee, his agent, or his attorney.
>
> "5. That no written Notice of Appraisement on Customs Form 4301 issued by the Collector of Customs under Sec. 501 of the Tariff Act of 1930 was ever delivered to or received by the importer of record, consignee, his agent, or his attorney.
>
> * * * * * * *
>
> "8. That the above-entitled protest was timely filed at the port of entry on November 19, 1962, claiming that the liquidation was premature, illegal, null and void, because of the failure to receive legal Notice of Appraisement as required by Sec. 501 of the Tariff Act of 1930 and Sec. 17.6 of the Customs Regulations.
>
> "9. That in the absence of Notice of Appraisement as required by Sec. 501, and pursuant to 28 USC Sec. 2636(D), the matter may be remanded to a single Judge, sitting in reappraisement, for determination of the value of the merchandise in the manner provided by law."

On June 23, 1969, the Third Division ruled in accordance with the plaintiff's claim that "the liquidation was premature, illegal, null and void, because of the failure to receive Legal Notice of Appraisement . . ." and, pursuant to the above stipulation and the statutory requirements of 28 U.S.C.A. 2636(d) the Third Division remanded the matter "to a single judge sitting in reappraisement, for determination of the value of the merchandise in the manner provided by law." (*Valley Hardware Supply, Inc.* v. *United States*, 62 Cust. Ct. 1110, Abs. P69/322 (1969).)

Under the applicable statute when a liquidation is held to be void because it is based upon an appraisement which is void in that notice of appraisement was not sent to the importer it is mandatory that the matter be remanded to a single judge to determine value.

The provisions of 28 U.S.C.A. 2636(d) are:

> "If upon the hearing of a protest, the court declares an appraisement of merchandise made after the effective date of the Customs Administrative Act of 1938 to have been invalid or void, it *shall* remand the matter to a single judge who shall determine the proper dutiable value of such merchandise in the manner provided by this chapter. In such proceeding no presumption of correctness shall attach to the invoice or entered values." (Emphasis added.)

July 23, 1973, the plaintiff filed its complaint seeking a reappraisement by a single judge in accordance with the remand.

Following two extensions of time to file its answer, on February 1, 1974, the defendant, who by stipulation had asked that the matter be remanded to a single judge for reappraisement in 1969, filed this motion in which it contends that the court is without jurisdiction to determine value as the appraisement is incomplete and *not invalid or void*, and requests that the court return the action to the appropriate customs officer "for appropriate administrative action," citing *The New Home Sewing Machine Co.* v. *United States*, 62 Cust. Ct. 895, R.D. 11655 (1969), an appeal to reappraisement case in which the court also held that a liquidation was *void* where a notice had been sent erroneously to the plaintiff before appraisement. See also Judge Landis, speaking for the majority in *Pistorino & Co., Inc.* v. *United States*, 67 Cust. Ct. 245 at p. 251, C.D. 4281 (1971), where the court pointed out that the appeal to reappraisement in the *New Home* case was taken *prior to appraisement* as "Customs prematurely, and prior to appraisement, had given the importer notice that the appraisement had already been made when in fact it had not", and restated that the liquidation in the said case was *void*. The Court of Customs and Patent Appeals did not pass upon the *New Home* case when it was before it collaterally in *National Silver Co.* v. *United States*, 59 CCPA 185, (see p. 190), C.A.D. 1064, 463 F.2d 1387 (1972). The authority

cited in the *New Home* case for support of the procedure of sending a case back to the appraiser to mail a notice of appraisement on the theory of incompleteness of appraisement, *Alfred Dunhill of London, Inc.* v. *United States*, 22 Cust. Ct. 209, C.D. 1178 (1949), did hold "that the appraisement was incomplete [where notice had not reached the importer], and that a proper notice of appraisement should be sent to the plaintiff so that the appraisement may be completed and plaintiff be given an opportunity, if it so desires, to file an appeal for reappraisement." The Government advanced the same "incompleteness of appraisement" theory citing the *Alfred Dunhill of London, Inc.* case, three years later in 1952, in the case of *United States* v. *James H. Rhodes & Co.*, 40 CCPA 1, C.A.D. 488 (1952), before the Court of Customs and Patent Appeals. However, the theory was rejected and the court followed the mandatory requirements of the statute and held that where there has been a liquidation upon a void appraisement there should be a "day in court."

Also, the *New Home* case was *a reappraisement case.* The involved case being a *protest* matter in a remand to a single judge to find value status, at the time Public Law 91-271 became effective, October 1, 1970, it is deemed, under rule 14.9(b)(2), a trial which had been commenced prior to October 1970, and is governed by practices and procedures in effect prior to October 1, 1970. The plaintiff has not responded to the motion to dismiss, but the judge in Motion Part has no authority to set aside a remand order by a Division entered pursuant to the request of both parties in a stipulation which was in conformity with mandatory statutory procedure in protest matters as required by 28 U.S.C.A. 2636(d); and dismiss the case for "incompleteness of appraisement" and refer it to the appropriate customs officer for proper administrative action.

The defendant's motion to dismiss for lack of jurisdiction is denied.

(C.R.D. 74-5)

NAGARA TRADING CO. *v.* UNITED STATES

Memorandum to Accompany Order

Court Nos. 61/8874, 61/8875, 61/9008

Port of Los Angeles on Administration

[Motions denied.]

(Dated April 8, 1974)

Stein & Shostak (*Marjorie M. Shostak* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

RICHARDSON, Judge: These are motions by the defendant to dismiss actions for lack of jurisdiction to determine value, on the theory of incompleteness in the appraisement in that notice of the appraised value did not reach the importer; and to refer the actions to the district director at the port of Los Angeles to take appropriate administrative action.

Three protests covering as many entries were consolidated for trial. The importations consist of rubber soled footwear exported from Hong Kong and entered at Los Angeles at various times. The entries were liquidated on the basis of advanced values. It was claimed that the liquidations were illegal and void because notice of appraisement was not given as required by statute.

In a stipulation before the Third Division by and between counsel for the respective parties, they agreed that:

> "* * * upon appraisement of these entries the appraised value did exceed the entered value of the merchandise and that the collector failed to give written notice of appraisement to the plaintiff or the consignee or the importer, his agents or to his attorney"

in accordance with the requirements of section 501, Tariff Act of 1930, as amended (19 U.S.C.A. 1501).

The Third Division in accepting the stipulation as evidence of the facts, and upon the authority of 19 U.S.C.A. 1501 and *United States* v. *James H. Rhodes & Co.*, 40 CCPA 1, C.A.D. 448 (1952), held the liquidations to be illegal and void.

In accordance with the provisions of 28 U.S.C.A. 2636(d) the matter was remanded to a single judge of this court to determine the proper dutiable value of the subject merchandise in the manner provided by law. (*Nagara Trading Co., Inc.* v. *United States*, 49 Cust. Ct. 310, Abs. 67217 (1962).)

When a liquidation is held to be void because it is based upon an appraisement which is void in that notice of appraisement was not sent to the importer it is mandatory that the matter be remanded to a single judge to determine value.

The provisions of 28 U.S.C.A. 2636(d) are:

> "If upon the hearing of a protest, the court declares an appraisement of merchandise made after the effective date of the Customs Administrative Act of 1938 to have been invalid or void, it *shall* remand the matter to a single judge who shall determine the proper dutiable value of such merchandise in the manner provided by this chapter. In such proceeding no presumption of correctness shall attach to the invoice or entered values." (Emphasis added.)

The plaintiff filed its complaints seeking a reappraisement by a single judge in accordance with the remand. Subsequently, the defendant filed these motions to dismiss, and the plaintiff has not responded to the motions to dismiss.

The defendant's argument is that the appraisement is incomplete and *not invalid or void*, citing *The New Home Sewing Machine Co.* v. *United States*, 62 Cust. Ct. 895, R.D. 11655 (1969), an appeal to reappraisement case in which the court also held that a liquidation was *void* where a notice had been sent erroneously to the plaintiff before appraisement. See also Judge Landis, speaking for the majority in *Pistorino & Co., Inc.* v. *United States*, 67 Cust. Ct. 245 at p. 251, C.D. 4281 (1971), where the court pointed out that the appeal to reappraisement in the *New Home* case was taken *prior to appraisement* as "Customs prematurely, and prior to appraisement, had given the importer notice that the appraisement had already been made when in fact it had not", and restated that the liquidation in the said case was *void*. The Court of Customs and Patent Appeals did not pass upon the *New Home* case when it was before it collaterally in *National Silver Co.* v. *United States*, 59 CCPA 185, (see p. 190), C.A.D. 1064, 463 F. 2d 1387 (1972). The authority cited in the *New Home* case for support of the procedure of sending a case back to the appraiser to mail a notice of appraisement on the theory of incompleteness of appraisement, *Alfred Dunhill of London, Inc.* v. *United States*, 22 Cust. Ct. 209, C.D. 1178 (1949), did hold "that the appraisement was incomplete [where notice had not reached the importer], and that a proper notice of appraisement should be sent to the plaintiff so that the appraisement may be completed and plaintiff be given an opportunity, if it so desires, to file an appeal for reappraisement." The Government advanced the same "incompleteness of appraisement" theory citing the *Alfred Dunhill of London, Inc.* case, three years later in 1952, in the case of *United States* v. *James H. Rhodes & Co., supra*, before the Court of Customs and Patent Appeals. However, the theory was rejected and the court followed the mandatory requirements of the statute and held that where there has been a liquidation upon a void appraisement there should be a "day in court."

Also, the *New Home* case was *a reappraisement case.* The involved cases being *protests* matters in a remand to a single judge to find value status, at the time Public Law 91-271 became effective, October 1, 1970, they are deemed, under rule 14.9(b)(2), trials which had been commenced prior to October 1970, and are governed by practices and procedures in effect prior to October 1, 1970. The plaintiff has not responded to the motions to dismiss, but the judge in Motion Part has

no authority to set aside a remand order by a Division entered pursuant to the request of both parties in a stipulation which was in conformity with mandatory statutory procedure in protest matters as required by 28 U.S.C.A. 2636(d); and dismiss the cases for "incompleteness of appraisement" and refer them to the district director of customs for proper administrative action.

The defendant's motions to dismiss for lack of jurisdiction are denied.

(C.R.D. 74–6)

LIFE-O-MATIC PRODUCTS, INC., ET AL. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. R70/3953 and 24 others

Port of New York

[Motion to quash granted in part.]

(Dated April 25, 1974)

Allerton deC. Tompkins for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

LANDIS, Judge: Plaintiffs in this motion, seek relief modifying or otherwise quashing defendant's subpoena duces tecum which had sought production at trial of documents and other things identified in sixteen numbered paragraphs of a schedule annexed to the subpoena. Defendant opposes the motion. Rule 10.1(c) of this court *inter alia* provides that the court may "quash or modify any subpoena if it is unreasonable or oppressive." Defendant purports that plaintiffs have made no showing that the subpoena is oppressive or unreasonable. The court, nevertheless, has inherent power to protect anyone from oppressive or unreasonable use of process, even if the process is not actually intended to be oppressive or unreasonable. *Norman F. Hecht et al.* v. *Pro-Football, Inc., et al.*, 46 F.R.D. 605 (1969). It is also without question that a party, seeking production by a subpoena duces tecum from a party to the action, must establish good cause for issuance of the subpoena if it is challenged by a motion to quash. *Dart Industries, Inc.* v. *Liquid Nitrogen Processing Corp. of California*, 50 F.R.D. 286 (1970).

There has been, in this case, a good deal of personal correspondence between counsel for the parties and by counsel before the court wherein

counsel refer to a district court matter that has nothing to do with the issues in this case. In acting on this motion, however, the court is solely concerned with the issues in this case. On the issues joined in this case defendant has failed to show, that at this particular stage in this reappraisement case, there is any good cause for producing the documents and information sought by the subpoena at trial.

Plaintiffs' complaint in this action broadly challenges the customs valuation of merchandise, exported from England, at the price freely offered to all purchasers for export at the times of exportation, 19 U.S.C.A. § 1401a, during the period July 1966 to May 1968. The customs export value basis of valuation and the amount thereof are presumptively correct, which means that defendant need introduce no evidence until plaintiffs challenging the customs valuation prove otherwise. 28 U.S.C.A. § 2633. In proving otherwise, plaintiffs must establish not only that the customs valuation is incorrect but that the claimed value is correct. *Inter-Maritime Forwarding Co., Inc.* v. *United States*, 59 CCPA 84, C.A.D. 1044 (1972). Notwithstanding plaintiffs' burden of proof on the issue of valuation, defendant's subpoena *inter alia* requests plaintiffs to produce documents and things for the years 1960 to 1968, including such as are apparently in control of the foreign seller. Plaintiffs, in this reappraisement case, cannot very well carry their burden of proof without cooperation from the seller. The court cannot anticipate what that cooperation will be. The defendant does, of course, have the right to show any inaccuracies it can find in plaintiffs' case. This does not, however, open up to the defendant an entire field of exploration for documents and things apparently not now in plaintiffs' control, on the valuation issues which have long been present in this case. Such an exploration makes the subpoena an unreasonable attempt at discovery which is inappropriate at this stage. *United States* v. *Watchmakers of Switzerland Information Center, Inc.*, 27 F.R.D. 513, 515 (1961).

Plaintiffs, in this motion, seek relief modifying the subpoena duces tecum to the extent that the documents and things identified in items 1, 7, 8, 9, 13, 14, and 15, covering the period 1960 to 1968, be limited to the years 1966 through 1968, and that the subpoena be quashed with respect to documents and things in control of "Lan-Elec", the foreign seller, identified in items 3, 4, 5, 6, 10, 11, and 12 of the subpoena. The court is of the opinion that defendant's subpoena, in the posture of the issues joined at this stage of the proceeding, is an unreasonable and oppressive demand for documents and information that are not now shown to be reasonably necessary to defendant's defense considering the heavy burden of proof plaintiffs have assumed in challenging the customs valuation.

The motion to limit and squash the subpoena duces tecum is, therefore, granted in part as follows: the subpoenaed items 1, 7, 8, 9, 13, 14, and 15 are limited to the period 1966 through 1968, and the subpoenaed items 3, 4, 5, 6, 10, 11, and 12 are quashed.

Order will so enter.

(C.R.D. 74–7)

CONSOLIDATED MERCHANDISING CO. ET AL. *v.* UNITED STATES

Memorandum Opinion Accompanying Order

Court Nos. R70/4168 and 34 others; R70/6883 and 21 others; R70/7010; R70/7012 and 3 others

(Dated May 30, 1974)

Serko & Sklaroff (*Murray Sklaroff* of counsel) for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*Andrew P. Vance* and *Velta A. Melnbrencis*, trial attorneys), for the defendant.

BOE, Chief Judge: Pursuant to an order of this court under date of April 24, 1974, the parties were directed to appear on May 14, 1974 and show cause why certain proposed decisions and judgments previously filed in connection with the above-entitled actions should not be signed and entered by the court. A review of the facts relating to said causes of action is appropriate in order to perceive the basic reasons upon which the decision of this court is predicated.

These actions, together with 128 additional cases, originally were a part of what is referred to by the rules of this court as the October 1970 reserve file, which comprised a total of approximately 177,000 cases.[1] All cases included within this classification were to be removed therefrom by October 31, 1972, or thereafter be dismissed by the clerk of this court. (Rule 14.6(c).)

In its effort to remove the causes of action in question from the October 1970 reserve file, the plaintiffs entered into negotiations with the defendant for the purpose of securing stipulations on agreed statement of facts relating to said cases upon which proposed decisions and judgments might be submitted to this court.

In order to facilitate this procedure and upon appropriate motion by the plaintiffs, this court granted three extensions of time during which the actions in question might remain in the October 1970 re-

[1] The proposed decisions and judgments cover 60 actions in the October 1970 reserve file and two other actions; viz—R69/5995 and R68/1048.

serve file. Two of such orders were granted by this court under dates of October 27, 1972, and October 5, 1973. The third and final motion for extension by the plaintiffs was made under date of October 29, 1973.

At a conference relating thereto with counsel on November 12, 1973, this court was advised that all but 70 of the original causes of action hereinbefore referred to had been the subject of stipulation by the respective parties and that decisions and judgments had been submitted to this court and duly entered. With respect to the remaining actions, counsel for both the plaintiffs and the defendant further advised the court that stipulations on an agreed statement of facts with respect thereto had been entered into and that proposed decisions and judgments would be submitted by the plaintiffs for defendant's approval and delivery to this court that date or the following day. Relying on such representation, the court granted an order under date of November 14, 1973, extending the time until January 1, 1974, during which the remaining causes of action in question might continue in the October 1970 reserve file prior to automatic dismissal by the clerk of this court.

On January 9, 1974 the causes of action in question were dismissed by the clerk of this court for lack of prosecution.[2] The defendant on January 29, 1974, however, filed with this court the decisions and judgments relating to the actions in question which had been submitted by the plaintiffs to the defendant at the time aforementioned.

On February 15, 1974 the plaintiffs moved to have the orders of dismissal, entered under date of January 9, 1974, set aside and vacated to which motion the defendant objected on the grounds that the court lacked jurisdiction over the subject matter of the actions in question inasmuch as a timely motion for a "rehearing" had not been filed with this court within a period of thirty (30) days after the entry of the orders of dismissal, pursuant to rule 12.1 of this court and title 28 U.S.C., section 2639.

At a further conference with counsel for the respective parties this court was advised by counsel for the defendant that the decisions and judgments had been submitted by plaintiffs on or about November 13, 1973, and that through inadvertence and mistake counsel for the defendant had failed to file the said decisions and judgments with the court until January 29, 1974. Counsel for plaintiffs, in turn, advised that through error and mistake, he failed to note the orders of dismissal which had been entered by the clerk of this court under date of January 9, 1974, and had, accordingly, omitted to take remedial action

[2] The two causes of action (R69/5995 and R68/1048) which were not part of the October 1970 reserve file had not been dismissed.

with respect thereto until the date of the motion to set aside and vacate was filed with this court.

On March 11, 1974 this court made and entered its order setting aside and vacating the orders of dismissal previously entered under date of January 9, 1974, and restoring the causes of action in question to the October 1970 reserve file for a period to and including April 15, 1974.

The defendant subsequently filed motions to withdraw the stipulations on agreed statement of facts entered into by the respective parties and the proposed decisions and judgments which had been filed with this court as aforesaid. At a hearing with respect to said motions, requested by the defendant, the court was advised that the motions to withdraw the stipulations and proposed decisions and judgments were not predicated upon the merits thereof, but, rather, solely upon the fact that the instruments had been erroneously filed by the defendant subsequent to the orders dismissing said actions. Counsel for plaintiffs and defendant having signed the stipulations on agreed statement of facts, it appeared to the court that neither party had a right of physical possession thereto to the exclusion of the other by the removal of the same from the files and records of this court. Accordingly, on April 24, 1974, this court denied the motions of the defendant and directed that these instruments be and remain a part of the files and records of the court.

On April 24, 1974 this court made and entered its order directing the parties to appear and show cause why the proposed decisions and judgments in connection with the causes of action on file herein should not be signed and entered as final decisions and judgments.

The court in making its decision is of the opinion that because of the expansive construction which previously had been placed upon title 28 U.S.C., section 2640, presently, as amended, section 2639, the reasoning of this court with respect to the application of said statute as it relates to the foregoing facts and circumstances should be set forth.

Title 28 U.S.C., section 2639 provides:

> The judge who has rendered a judgment or order may, upon motion of a party or upon his own motion, grant a retrial or a rehearing, as the case may be. A party's motion must be made or the judge's action on his own motion must be taken, not later than thirty days after entry of the judgment or order.

The fundamental question presented herein for determination, accordingly, is whether the aforequoted statute precludes this court from the exercise of its inherent judicial power to set aside and vacate a prior order of dismissal, which through the negligence, inadvertence, and mistake by the respective parties had been entered by this court.

The court is aware of and has given full consideration to the prior decisions construing title 28 U.S.C., section 2640.[3]

With due deference to my learned colleagues, however, I submit that I am unable to extend the reasoning and application of these decisions to the facts in the within proceeding.

The words "rehearing" and "retrial" have a distinct meaning in legal terminology. Their meaning in connection with the practice and procedure in the United States Customs Court cannot be said to be different from their meaning used in connection with the practice and procedure in other courts—federal or state. Nor does section 2639, aforequoted, reflect any intention to give to these words any meaning other than their ordinary and common usage.

In many of the prior decisions of this court, as well as in the decisions of other courts, scant effort has been made to define the meaning of the words "retrial" and "rehearing." This court, however, in the case of *Borneo-Sumatra Trading Company, Inc.* v. *United States*, 49 Cust. Ct. 510, A.R.D. 150 (1962), has given a succinct definition to these terms which have so often been used but with only passing generality:

> * * * By every intendment, the words "rehearing" and "retrial" presuppose an original hearing or an original trial and, hence, normally relate to decisions on the merits after a hearing has been held. * * * [*Supra*, at p. 513.]

To hold that every petition or a motion to set aside and vacate a prior order or judgment, irrespective of the facts, circumstances or reasons therefore constitutes, per se, a "rehearing" or "retrial" and, accordingly, subject to the time limitation provided by section 2639, is to place an unwarranted and unintended straightjacket on the inherent power of judicial discretion of this court.

The power of the Congress to fix the time within which a party litigant must avail itself of further procedural remedies is unquestioned. Time limitations necessarily must be imposed in order to maintain an orderly supervision of litigation. But a great distinction exists between the failure of a party litigant to pursue his remedy within a period prescribed by statute or rule, and the right of a party litigant to seek relief from the entry of orders or judgments because of excusable neglect, inadvertence, fraud or mistake. Required conformance to act within a prescribed statutory time period with respect to perfecting an appeal or with respect to the retrial of an action upon the merits is not inconsistent with the discretionary power which a

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[3] *Kaiser Reismann Corp. et al.* v. *United States*, 47 Cust. Ct. 363, Abstract 66205 (1961). *Gehrig, Hoban & Co., Inc.* v. *United States*, 49 Cust. Ct. 403, Reap. Dec. 10343 (1962). *Aut Customs Brokers, Inc.* v. *United States*, 49 Cust. Ct. 427, Reap. Dec. 10356 (1962). *United States* v. *Williams, Clarke Company*, 52 Cust. Ct. 639, A.R.D. 173 (1964).

court must exercise in the accomplishment of its primary obligation—the determination of justice. In the latter instance, it may be said that the court acts only to permit that which may have been done to be undone and the parties restored to their original position.

Such a distinction is well illustrated by rule 59 and rule 60(b) of the Federal Rules of Civil Procedure. By rule 59 it is provided that a motion for a new trial must be served not later than ten (10) days after the entry of the judgment. From rule 60(b) it is evident, however, that the relief provided for thereunder is recognized and intended to be separate and distinct from any statutory provision or rule providing a fixed and inflexible time period during which further procedural remedies might be sought. A greater and more extensive period of time is permitted by rule 60(b) during which a party by reason of special facts and circumstances—in the court's sound discretion—may be deemed to justify such relief.

In view of the distinction thus recognized by the Federal Rules of Civil Procedure, it is difficult, indeed, to perceive how the terms "rehearing" and "retrial," referred to in section 2639, can be given such a comprehensive construction as to include within its orbit the motion to vacate the orders of dismissal entered January 9, 1974 in the within proceedings—orders which had never been determined on their merits and which, unquestionably, were entered because of the concurrent mistake and inadvertence of counsel for plaintiffs and defendant under a unique procedure provided by the rules adopted by the United States Customs Court and never in existence at the time of the enactment of the statute in question. I refer in particular to the October 1970 reserve file and the unusual volume of cases included therein.

The United States Customs Court is a duly constituted court of the United States, declared to be a court established under article III of the Constitution of the United States, 28 U.S.C., section 451, and section 251, as amended by Act of July 14, 1956. As stated in *Borneo-Sumatra Trading Company, Inc.* v. *United States*, *supra*, it is "* * * clothed with all the inherent powers of a Federal district court, and authorized to apply the same rules of evidence, practice, and procedure. 28 U.S.C., sections 452, 1581; *United States* v. *Western Electric Company*, 26 Cust. Ct. 531, Reap. Dec. 7954. * * *" (P. 514.)

The conscience of this court will not permit the rights of a party litigant to be summarily extinguished because of a presumed limitation upon the inherent power of this court. Therefore, in the absence of a rule of procedure applicable to the facts and circumstances herein, the prerogative provided by rule 1.1(b) of this court has been invoked.

Let an order be entered directing that the decisions and judgments previously filed with the court on January 29, 1974, accordingly, be signed and entered as final decisions and judgments.

ABSTRACTS OF CUSTOMS COURT DECISIONS

Protests

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/1	Boe, C. J. January 4, 1974	Norca Corporation	70/27906, etc.	Item 653.95 13.5% (as entireties)	Appraisements and liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293) Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459)	New York Inserts (metal tray plugs) and rubber stoppers; separate articles
P74/2	Ford, J. January 4, 1974	Marubeni-Iida America, Inc., et al.	65/7779, etc.	Par. 353 15% (items marked "B") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 13¾% or 12½% (items marked "B") Par. 353 12½% (items marked "C")	Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones, not subminiature, having an essentia electrical feature (items marked "B") Cases imported with radios (entireties) (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/3	Ford, J. January 4, 1974	Terra International, Ltd., et al.	67/59920, etc.	Item 706.08 20% (items marked "A") Item 684.70 15% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A") General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "B")	Los Angeles Cases imported with and used as containers for radios (items marked "A") Ear jacks and earphones imported with radios (not in excess of the radios) (items marked "B")
P74/4	Landis, J. January 4, 1974	Silbo Steel Corporation	67/3573, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc , et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1012)	Jacksonville (Tampa) Iron and steel forgings
P74/5	Landis, J. January 4, 1974	Silbo Steel Corporation	69/6197	Item 610.80 17% plus a countervailing duty of 2.5%	Item 608.25 9.5% plus a countervailing duty of 2.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P74/6	Maletz, J. January 4, 1974	American Honda Motor Co., Inc.	67/52784	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles-Long Beach Contact breakers and breaker assemblies
P74/7	Maletz, J. January 4, 1974	American Honda Motor Co., Inc.	67/63071	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles-Long Beach Contact breakers and breaker assemblies

P74/8	Maletz, J. January 4, 1974	American Honda Motor Co., Inc.	67/83028	Item 695.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles-Long Beach Contact breakers and breaker assemblies
P74/9	Maletz, J. January 4, 1974	Avina Industrial Products Corp.	68/28356, etc.	Item 685.90 15.5%, 10% or 8.5%	Item 685.25 11%, 7% or 6%	Agreed statement of facts	New York Plugs or radio antenna parts
P74/10	Maletz, J. January 4, 1974	Inarco Corporation	70/64061	Item 748.20 23.5%	Item 774.60 11.5%	Judgment on the pleadings	Cleveland "12" Single Adiantum Fern" (articles obtained in one piece from plastics by molding)
P74/11	Maletz, J. January 4, 1974	Inarco Corporation	70/64062	Item 748.20 23.5%	Item 774.60 11.5%	Judgment on the pleadings	Cleveland "11" Adiantum Cluster" (plastic artificial plants assembled from parts without the use of flexible binding materials, glue or similar materials); "16" Single Adiantum Fern", and "24" Adiantum Fern" (articles obtained in one piece from plastics by molding)
P74/12	Maletz, J. January 4, 1974	International Artware Corporation	67/36204-S	Item 748.20 28%	Item 772.97 17%	Judgment on the pleadings	Cleveland "Mistletoe hanging balls"; "hanging holly balls" (plastic Christmas ornaments not used chiefly as Christmas tree ornaments)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/13	Maletz, J. January 4, 1974	International Artware Corporation	68/38270-S	Item 772.05 25.5%	Item 772.97 17%	Judgment on the pleadings	Cleveland "Mistletoe hanging balls"; "small mistletoe balls" (plastic Christmas ornaments not used chiefly as Christmas tree ornaments)
P74/14	Maletz, J. January 4, 1974	International Artware Corporation	69/10313-S	Item 772.95 25.5%	Item 772.97 17%	Judgment on the pleadings	Cleveland "Mistletoe hanging balls" (plastic Christmas ornaments not used chiefly as Christmas tree ornaments)
P74/15	Maletz, J. January 4, 1974	E. J. Korvette (Div. Spartans Ind., Inc.)	69/43071, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At such compound rates as set forth in said schedule in column headed "Claimed Rate", the specific portion of the compound rate being applied once against each utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets, etc.

P74/16	Maletz, J. January 4, 1974	National Silver Company	67/9981, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A, attached to decision and judgment in column headed "Assessed Rate"	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.
P74/17	Maletz, J. January 4, 1974	Robert S. Osgood, Inc.	68/50442	Item 727.40 17%	Item 202.54 8%	Judgment on the pleadings	Los Angeles Lauan drawer sides
P74/18	Maletz, J. January 4, 1974	U.S. Suzuki Motor Corp.	68/13858	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles—Long Beach Contact breakers and breaker assemblies
P74/19	Newman, J. January 4, 1974	Wal Rich Corp. et al.	66/11615, etc.	Item 657.35 1.275¢ per lb. plus 15%	Item 654.00 10%	The Westbrass Company v. U.S. (C.D. 4293)	New York Duo strainers, duplex sink strainers, etc.
P74/20	Re, J. January 4, 1974	Border Brokerage Co., Inc.	69/25154 etc.	Item 202.66 17% or 15%	Item 202.63 1.5% or 1%	Border Brokerage Company, Inc. v. U.S. (C.D. 3903)	Blaine (Seattle) Wood picture frame moldings
P74/21	Maletz, J. January 9, 1974	Creative Playthings Div. of CBS, Inc.	71/53	Item 737.90 24%	Item 737.55 14.5%	Judgment on the pleadings 1-2 Kangaroo, Inc. v. U.S. (C.D. 4236)	New York Rings, 8-604, and combination set 8-605
P74/22	Boe, C.J. January 10, 1974	Norca Corporation	70/10775, etc.	Item 657.20 15% and 13%	Item 653.95 13.5% and 11.5%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	New York Stainless steel strainers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/23	Ford, J. January 10, 1974	AMD Electronics, Inc., et al.	70/22628, etc.	Item 684.70 15%	Item 685.22 12.5%	Summary judgment General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/24	Richardson, J. January 10, 1974	North American Foreign Trading Corp.	68/2042	Item 653.40 19%	Item 688.40 11.5%	Judgment on the pleadings	New York 6 transistor high-tensity lamp-radios
P74/25	Maletz, J. January 10, 1974	Associated American Winding Machinery, Inc.	70/47951	Item 674.35 15%	Item 670.90 12%	Judgment on the pleadings Broderick & Bascom Rope Co. v. U.S. (C.A.D. 1053)	New York High speed double twist bunching machines
P74/26	Maletz, J. January 10, 1974	Durst Industries, Inc.	70/16143	Item 657.35 1¢ per lb. plus 12%	Item 654.00 8%	Judgment on the pleadings	New York Brass ball-joint shower heads.
P74/27	Maletz, J. January 10, 1974	General Instrument Corporation	70/22348	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/28	Maletz, J. January 10,	General Instrument Corporation	70/32865	Item 687.60 12.5% without	Gold wire: Item 807.00	Judgment on the pleadings	New York American goods returned

P74/28	Maletz, J. January 10, 1974	General Instrument Corporation	70/32865	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/29	Maletz, J. January 10, 1974	General Instrument Corporation	70/32867	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commerical invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/30	Maletz, J. January 10, 1974	General Instrument Corporation	70/33759	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commerical invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/31	Maletz, J. January 10, 1974	General Instrument Corporation	70/33763	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/32	Maletz, J. January 10, 1974	General Instrument Corporation	70/37381	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)

P74/33	Maletz, J. January 10, 1974	General Instrument Corporation	70/45374	Item 687.60 11% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/34	Maletz, J. January 10, 1974	General Instrument Corporation	70/56816	Item 687.60 11% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 with its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/35	Maletz, J. January 10, 1974	General Instrument Corporation	70/58582	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Gold wire: Item 807.00 With its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/36	Maletz, J. January 10, 1974	General Instrument Corporation	70/50002	Item 687.60 12.5% without allowance under item 807.00 for cost or value of product of U.S., gold wire.	Gold wire: Item 807.00 With its cost or value, as shown on commercial invoice, being deducted from the appraised value of the imported transistors	Judgment on the pleadings	New York American goods returned (gold wire incorporated into transistors)
P74/37	Maletz, J. January 10, 1974	Matz Trading Co	67/84286	Item 680.20 18% plus 1.275¢ per lb.	Item 654.00 10% (as to shower heads on entry 700197) Protest overruled as to entry 949001	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293) (merchandise covered by entry 700197)	New York Shower heads
P74/38	Maletz, J. January 10, 1974	The May Dept. Stores Co.	70/65295	Item 772.06 11.5% plus 14.7% per lb.	Item 772.15 11.5%	Judgment on the pleadings	New York "Plastic 4 pcs. Snack Set with Cover"

P74/39	Maletz, J. January 10, 1974	U.S. Suzuki Motor Corp.	67/76253	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles Contact breakers or breaker assemblies
P74/40	Maletz, J. January 10, 1974	Warwick Electronics, Inc.	68/45704, etc.	Item 725.06 34%	Item 725.45 17% (except 50 "Jumbo" guitars)	Judgment on the pleadings	Chicago Electronic guitars
P74/41	Maletz, J. January 10, 1974	Z & T Importing Co., Inc.	70/53323	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings	Los Angeles Earphones
P74/42	Newman, J. January 10, 1974	Bert Friedberg & Co. et al.	64/18942, etc.	Par. 1531 20%	Par. 353 12.5%	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	San Francisco Cases for radios (entireties)
P74/43	Ford, J. January 16, 1974	General Electric Co., Inc.	65/16621	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings General Electric Co. v. U.S. (C.D. 3887), aff'd C.A.D. 1021)	Utica (Buffalo) Earphones
P74/44	Ford, J. January 17, 1974	Laconia Needle Mfg. Co.	70/25323, etc.	Item 670.58 70¢ per 1000 plus 21%	Item 609.88 7.5%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/45	Ford, J. January 17, 1974	Oceanic Forwarding Co.	65/16464, etc.	Merchandise appraised and classified as entireties	Separate appraised values not determined; appraisement and liquidation not in accordance with law; protests premature and dismissed	United Merchandise Corp. et al. v. U.S. (C.D. 2313) Torch Mfg. Co., Inc. v. U.S. (C.D. 2803)	San Francisco Stuffed animals containing tubeless transistor radios and batteries (separate tariff entities)
P74/46	Ford, J. January 17, 1974	Sanyei New York Corp.	67/23103, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Francisco Earphones imported with radios with which they are used
P74/47	Ford, J. January 17, 1974	Sanyei New York Corp. et al.	70/24138, etc.	Item 684.70 15%, 13% or 12%	Item 685.22 12.5% Item 685.25 11% or 10%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Francisco Earphones imported with radios with which they are used (entireties)
P74/48	Ford, J. January 17, 1974	Spiegel's, Inc.	70/24192, etc.	Item 684.70 13%	Item 685.22 11%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Francisco Earphones
P74/49	Landis, J. January 17, 1974	Asiatic Petroleum Corp. et al.	66/40290, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	New York Shell Alexia Oil A

P74/50	Landis, J. January 17, 1974	Morris Friedman & Co.	71-12-02092	Item 737.90 24%	Item 534.97 18.5%	Agreed statement of facts	Philadelphia Mushroom magnets
P74/51	Landis, J. January 17, 1974	Robert M. McCoy	68/49504, etc.	Item 610.80 17%	Item 608.25 9.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P74/52	Landis, J. January 17, 1974	Mohawk Industries, Inc.	71-6-00466, etc.	Item 207.00 13%	Item 202.46 30¢ per thousand feet board measure	Agreed statement of facts	New Orleans Ramin lumber
P74/53	Landis, J. January 17, 1974	New York Merchandise Co., Inc.	64/23160	Item 533.73 45% and 10¢ per doz. pcs.	Item 534.94 45%	New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	San Diego Decorated porcelain cups and saucers
P74/54	Watson, J. January 17, 1974	Sol Spitz Co., Inc., et al.	71-10-01368, etc.	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.
P74/55	Maletz, J. January 17, 1974	Hoyt, Shepston & Sciaroni Imperial Rug Mills, Inc.	64/20295, etc.	Item 390.40 9¢ per lb.	Item 793.00 4%	J. M. Evans & Company v. U.S. (C.D. 3809)	San Francisco Wool dryer felts
P74/56	Maletz, J. January 17, 1974	Kayson's International, Limited	70/1974	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings	Los Angeles Earphones
P74/57	Maletz, J. January 17, 1974	Lloyds Electronics International	68/64029	Item 684.70 15%	Item 685.25 12%	Judgment on the pleadings	New York Earphones

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/58	Newman, J. January 17, 1974	C. S. Emery & Company, Inc.	70/24308	Item 657.20 17%	Item 657.15 10.5%	Judgment on the pleadings Grafton Spools, Inc. v. U.S. (P70/790)	Island Pond, Vt. (St. Albans) Metal spools designated "E.3"
P74/59	Re, J. January 17, 1974	A & P Import Co.	71-8-00917	Item 772.15 15%, 13.5% or 10%	Item 772.35 11%, 10% or 7%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/60	Re, J. January 17, 1974	Bar-Zel Expediters, a/c Action Lobeco Imports, Ltd.	73-3-00780	Item 772.15 10%	Item 772.35 7%	Venetianaire Corp of America v. U.S. (C.A.D. 1084)	New York Twin pillow protectors, twin mattress covers, contour mattress covers, full mattress covers
P74/61	Re, J. January 17, 1974	Venetianaire Corp. of America et al.	71-6-00272, etc.	Item 772.15 11.5%	Item 772.35 8.5%	Venetianaire Corp of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/62	Rao, J. January 24, 1974	Amity Fabrics, Inc., et al.	63/16512, etc.	Par. 904(c) At rates provided therein, depending upon average yarn numbers	Par. 907 11%	Rohner, Gehrig & Co. v. U.S. (C.D. 4030)	New York Waterproof cotton suede cloth ("Meteor" or "Vellutina")
P74/63	Rao, J.	Lollytogs, Ltd.	64/8342,	Par. 919	Par. 919	The Nissho American Corp.	New York

P74/63	Rao, J. January 24, 1974	Lollytogs, Ltd.	64/8342, etc.	Par. 919 25%	Par. 919 20%	The Nissho American Corp. v. U.S. (C.D. 4005)	New York Shirt portions of corduroy longie sets; entireties
P74/64	Ford, J. January 24, 1974	Holmar International Corp. et al.	67/86730, etc.	Item 684.70 15%	Item 685.22 12.5%	Summary judgment	New York Earphones
P74/65	Landis, J. January 24, 1974	Border Brokerage Co. Inc.	66/57652, etc.	Item 114.50 17.5%	Item 166.40 2¢ per gal.	Border Brokerage Company, Inc. v. U.S. (C.D. 3999)	Seattle "Skeena" brand canned clam nectar
P74/66	Landis, J. January 24, 1974	BSR (USA), Ltd	70/66832	Item 685.32 10%	Varco CN 65D Cartridges in entry 815465: Item 807.00, with their cost or value of $2,763, being deducted from the appraised value of the imported phonographs Electro Voice EV 150 dia., Electro Voice EV 279 dia., Electro Voice EV 280 dia. in entry 780843: Item 800.00—Free of duty	Judgment on the pleadings	New York American goods returned
P74/67	Landis, J. January 24, 1974	Harpers Int'l., Inc.	67/51087	Par. 1531 20% (cases) Par. 353 15% (earphones)	Par. 353 12½% (cases and earphones under entry WH 151631) Protest overruled as to entry WH 151673	Judgment on the pleadings	New York Cases (entireties with radios) and earphones (articles having essential electrical features), imported with transistor radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/68	Landis, J. January 24, 1974	Kaysons Intl., Ltd., et al.	67/8102, etc.	Item 651.75 At various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At highest specific or compound rate for any article in the set and from which the ad valorem equivalent rate was computed; which compound rate should have been assessed once against each article or utensil in the set, such rate is set forth in said schedule in column headed "Claimed Rate"	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets
P74/69	Landis, J. January 24, 1974	New York Merchandise Co., Inc.	69/14643	Item 748.20 26.5%	Item 774.60 15%	Judgment on the pleadings	San Diego Curtain hooks

P74/70	Landis, J. January 24, 1974	Norca Corporation	70/27800	Item 657.35 13.5% plus 1¢ per lb.	Item 654.00 9%	Judgment on the pleadings	New York Brass shower heads
P74/71	Landis, J. January 24, 1974	Toyomenka, Inc.	61/23044	Par. 405 20%	Par. 1403 12.5%	Judgment on the pleadings Borneo Sumatra Trading Co., Inc. v. U.S. (C.D. 3980)	San Francisco Wood veneers laminated to a core of hard board
P74/72	Landis, J. January 24, 1974	United China & Glass Co.	59/14660, etc.	Par. 212 60% or 45% and 10¢ per doz. pcs.	Par. 212 45%	W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	San Francisco Decorated porcelain cups and saucers
P74/73	Landis, J. January 24, 1974	United China & Glass Co.	67/25338, etc.	Item 651.75 At various ad valorem equivalents set out in schedule attached to decision and judgment in column headed "Assessed Rate"	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	New Orleans Flatware sets, barbeque sets, tool sets, etc.
P74/74	Landis, J. January 24, 1974	United Silver & Cutlery Co. et al.	65/24454, etc.	Item 651.75 Various ad valorem equivalent rates	Item 651.75 At appropriate compound rate set forth in schedule of cases attached to decision and judgment	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/75	Landis, J. January 24, 1974	United Silver & Cutlery Co. et al.	66/59843, etc.	Item 651.75 Various ad valorem equivalent rates	Item 651.75 At appropriate compound rate set forth in schedule of cases attached to decision and judgment	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.
P74/76	Landis, J. January 24, 1974	Westwood Import Co.	71-8-00907	Item 772.06 16.5¢ per lb. plus 13.5% 14.7¢ per lb. plus 11.5%	Item 772.15 13.5% or 11.5%	Judgment on the pleadings	San Diego Segmented hors d'oeuvre dishes
P74/77	Landis, J. January 24, 1974	Westwood Import Co.	71-8-00908	Item 203.30 13.9¢ per lb. plus 11%	Item 206.97 11.5%	Judgment on the pleadings	San Diego Salad bowls
P74/78	Re, J. January 24, 1974	A. Perlman	68/19209	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/79	Rao, J. January 29, 1974	E. Dillingham, Inc.	71-9-01179, etc.	Item 309.30 11.9¢, 10¢, or 8.5¢ per lb.	Item 309.75 10%, 9% or 7.5%	E. Dillingham Inc. v. U.S. (C.D. 4406)	Alexandria Bay (Ogdensburg) Nylon 66, advanced waste in tow form
P74/80	Landis, J. January 29,	Ciba Chemical & Dye Co.	70/59847	Item 445.35	Item 493.50	Agreed statement of facts	New York

	January 29, 1974		etc.	11.9¢, 10¢, or 8.5¢ per lb.	10%, 9% or 7.5%	(C.D. 4406)	burg) Nylon 66, advanced waste in tow form
P74/80	Landis, J. January 29, 1974	Ciba Chemical & Dye Co.	70/59847	Item 445.35 2.75¢ per lb. plus 20%	Item 493.50 12.5%	Agreed statement of facts	New York Lyofix EW Conc., a product chiefly used as an assistant in preparing or finishing textiles
P74/81	Landis, J. January 29, 1974	A. N. Deringer, Inc.	68/67327	Item 727.40 17%	Item 202.53 5%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Champlain (Ogdensburg) Pallets of hardwood lumber
P74/82	Landis, J. January 29, 1974	General Electric Company	70/44363	Item 685.90 14% Item 684.70 12%	Item 685.25 10%	Judgment on the pleadings	Utica (Buffalo) Earphones and jacks which are parts of radio reception apparatus
P74/83	Landis, J. January 29, 1974	Goldfarb Novelty Co., Inc., et al.	69/24811, etc.	Item 740.38 As entireties	Item 740.30 or 740.38 (items marked "N") Item 737.20 (items marked "D") Appraisement based upon articles as entireties void; liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate action	Agreed statement of facts	New York Necklaces (items marked "N") Dolls (items marked "D")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/84	Landis, J. January 29, 1974	Siemens America, Inc., et al.	68/1526, etc.	Item 708.82 22%, 19.5%, 17.5% or 15%	Item 661.35 10.5%, 9%, 8% or 7%	Agreed statement of facts	New York Devices, used as accessories with electron microscopes, for cooling surroundings of the specimen, while maintaining specimen at room temperature
P74/85	Landis, J. January 29, 1974	Topp Electronics, Inc.	71-8-00740	Item 684.70 12%	Item 685.25 10%	Judgment on the pleadings	Los Angeles Earphones
P74/86	Landis, J. January 29, 1974	Walker & Zanger et al.	69/37609	Item 727.40 13.5%	Item 202.53 3%	Judgment on the pleadings Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Los Angeles Lauan drawer sides
P74/87	Watson, J. January 29, 1974	Hutzler Bros., Inc., et al.	67/79017, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Baltimore Artificial flowers, etc. (items marked "A" and "B")
P74/88	Watson, J.	Rice Bayersdorfer Co.	67/67420	Item 748.20	Item 774.60	Armbee Corporation et al. v.	San Francisco

						Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	
P74/88	Watson, J. January 29, 1974	Rice Bayersdorfer Co.	67/67420	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A" and "B")
P74/89	Newman, J. January 29, 1974	Ford Motor Company	68/55198, etc.	Item 657.20 17%	Item 666.00 Free of duty	Ford Motor Company v. U.S. (C.D. 4380)	Houston Cabs
P74/90	Newman, J. January 29, 1974	Ford Motor Company	68/64988, etc.	Item 657.20 17%	Item 666.00 Free of duty	Ford Motor Company v. U.S. (C.D. 4380)	Mobile Cabs
P74/91	Re, J. January 29, 1974	Venetianaire Corp. of America	73-5-01272	Item 772.15 10%	Item 772.35 7%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/92	Watson, J. February 4, 1974	Ken Hamanaka, a/c Sanmar-Gray Co., Inc., et al.	67/55827, etc.	Item 748.20 28%	Item 775.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/93	Watson, J. February 4, 1974	Hudson Merchandise Co.	72-1-00006, etc.	Item 544.51 23.5%, 20.5% or 17.5%	Item 544.54 14%, 12% or 10%	Hudson Merchandise Co. v. U.S. (C.D. 4429)	New York Mirror-flex
P74/94	Watson, J. February 4, 1974	Import Assoc. of America, Inc., et al.	67/79066, etc.	Item 748.20 23.5%, 25% or 28%	Item 774.60 17%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Baltimore Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/95	Watson, J. February 4, 1974	Shenandoah Floral Mfg. Co., Inc.	67/79082	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Baltimore Artificial flowers, etc. (items marked "A" and "B")
P74/96	Watson, J. February 4, 1974	F. B. Vandegrift & Co., Inc., et al.	67/14257 etc.	Item 748.20 28% (items marked "A", "B" and "C")	Item 774.60 17% (items marked "A" and "C") Item 772.97 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "C")	Philadelphia Artificial flowers, etc. (items marked "A" and "C") Mistletoe and holly floral arrangements (items marked "B")
P74/97	Newman, J. February 4, 1974	Ford Motor Company	70/30877, etc.	Item 657.20 4%	Item 692.30 3%	Ford Motor Company v. U.S. (C.D. 4395)	Detroit

						Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "C")	
P74/97	Newman, J. February 4, 1974	Ford Motor Company	70/30877, etc.	Item 657.20 17%, 15% or 13% (items marked "A", "B" and "C")	Item 692.30 Free of duty (items marked "A" and "B") Item 666.00 Free of duty (items marked "C")	Ford Motor Company v. U.S. (C.D. 4380) (items marked "A") Agreed statement of facts (items marked "B" and "C")	Detroit Power steering reservoirs (items marked "A") Tool boxes (items marked "B") Cabs (items marked "C")
P74/98	Re, J. February 4, 1974	Columbia Motor Corp. et al.	69/43817, etc.	Item 727.80 20%, 19% or 18%	Item 727.06 8.5%, 7.5% or 6.5%	Vilem B. Haan et al. v. U.S. (C.D. 4260)	New York Headrests or cushions
P74/99	Re, J. February 4, 1974	Bruce Duncan Co., Inc., a/c Asiatic Co., Inc., et al.	67/39147, etc.	Item 772.06 21¢ per lb. plus 17%; 16.5¢ per lb. plus 13.5%; or 14.5¢ per lb. plus 11.5%	Item 772.15 17% or 13.5%	Davar Products, Inc. v. U.S. (C.D. 3880) New York Merchandise Co., Inc. v. U.S. (C.D. 2895)	Los Angeles Candy dishes, serving trays, and salad bowls
P74/100	Re, J. February 4, 1974	Manton Cork Corp.	67/16023, etc.	Item 220.50 36% and 32%	Item 731.60 25% and 22%	Manton Cork Corp. v. U.S. (C.D. 4084)	New York Natural cork balls, cork balls or floats
P74/101	Rao, J. February 6, 1974	American Feldmuehle Corp. Hensel Bruckmann & Lorbacher, Inc.	68/62979, etc.	Item 649.46 18.5%	Item 555.41 12.5%	American Feldmuehle Corp. et al. v. U.S. (C.D. 4021)	New York Porcelain blanks, cutting tools, and cutting tips

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/102	Rao, J. February 6, 1974	R. J. Saunders Co., Inc.	66/30499, etc.	Item 708.82 22%	Item 661.35 10.5%	Agreed statement of facts	New York Devices used as accessories with electron microscopes by cooling the surroundings of a specimen to be examined while maintaining the specimen at room temperature.
P74/103	Landis, J. February 6, 1974	Associated Merchandising Corp. et al.	66/39698, etc.	Item 651.75 At various ad valorem equivalent rates as set forth in schedule A attached to decision and judgement in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate," the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P74/104	Landis, J.	Border Brokerage	64/8161	Par. 352	Par. 340	Border Brokerage Com-	Blaine (Seattle)

					fork, spoon or other utensil in the set		
P74/104	Landis, J. February 6, 1974	Border Brokerage Co., Inc.	64/8161	Par. 352 30% Par. 372 10.5% or 9%	Par. 340 10%	Border Brokerage Company, Inc. v. U.S. (C.D. 2689)	Blaine (Seattle) Dados
P74/105	Landis, J. February 6, 1974	Metasco, Inc.	66/18068, etc.	Item 651.75 At various ad valorem equivalent rates as set forth in schedule A attached to decision and judgment in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate", the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P74/106	Landis, J. February 6, 1974	F. W. Myers & Co., Inc.	70/56278	Item 774.60 13.5%	Item 661.95 9%	Agreed statement of facts	Detroit Filtering and purifying machinery and apparatus

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/107	Landis, J. February 6, 1974	Silbo Steel Corporation	68/41036, etc.	Item 610.80 17%	Item 608.25 9.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	Tampa Iron and steel forgings
P74/108	Watson, J. February 6, 1974	Allied Display Materials, Inc., et al.	66/38014, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A" and "B")
P74/109	Watson, J. February 6, 1974	Rice Bayersdorfer Co. et al.	69/26055, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Philadelphia Artificial flowers, etc. (items marked "A" and "B")
P74/110	Watson, J. February 6, 1974	Venetianaire Corp. of America	67/39760	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/111	Watson, J. February 6, 1974	Venetianaire Corp. of America	67/43994	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower cur-

P74/110	Watson, J. February 6, 1974	Venetianaire Corp. of America	67/39760	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/111	Watson, J. February 6, 1974	Venetianaire Corp. of America	67/43994	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/112	Watson, J. February 6, 1974	Venetianaire Corp. of America	68/2385	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/113	Watson, J. February 6, 1974	Venetianaire Corp. of America	68/18739	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/114	Watson, J. February 6, 1974	Venetianaire Corp. of America	68/27651	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/115	Watson, J. February 6, 1974	Venetianaire Corp. of America	68/35095	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks, Style 167
P74/116	Ford, J. February 8, 1974	Globe Importing Co.	58/11425, etc.	Par. 397 20%, 21%, or 19% (items marked "A" and "C")	Par. 339 14% or 12½% (items marked "A") Not entireties; liquidations premature; appraisements illegal, null and void; entries remanded to regional commissioner for administrative action not inconsistent with judgment (items marked "C")	Davies, Turner & Company v. U.S. (Abs. 67184 and 69651) (items marked "A") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459) (items marked "C")	New York Basket strainer replacement cups in c.v. of brass (items marked "A") Combination basket strainers (consisting of a basket insert, or a replacement cup, as well as a base) in c.v. of brass (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
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P74/117	Ford, J. February 8, 1974	Kanematsu New York, Inc., et al.	67/25960, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	New York Earphones imported with radios with which they are used
P74/118	Ford, J. February 8, 1974	Kowa American Corp. et al.	66/15910, etc.	Par. 353 15% (items marked "B") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 13¾% (items marked "B") Par. 353 12½% (items marked "C")	Midland International Corp. v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D.3968) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones, not subminiature, having an essential electrical feature (items marked "B") Cases imported with radios (entireties) (items marked "C")
P74/119	Ford, J. February 8, 1974	Soderhamn Machine Manufacturing Company	63/617, etc.	Par. 372 11⅓% or 10½% (items marked "E") Par. 353 13¾% (items marked "F")	Par. 372 8⅓% or 7½% (items marked "E") Par. 372 11½% (items marked "F")	Agreed statement of facts (items marked "E") Soderhamn Machine Mfg. Co. v. U.S. (Abs. 69205) (items marked "F")	Seattle Chipscreens (items marked "E") Cambio debarkers and parts thereof (items marked "F")
P74/120	Watson, J. February 8, 1974	American Express Co., a/c International Artware Corp.	68/6862	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/121	Watson, J. February 8,	C. Carbone & Co., Inc.	66/7055	Duty assessed on 840 cases of	District director ordered to re-	Agreed statement of facts	Boston

	1974	ware Corp.				tion et al. v. U.S. (C.D. 3279)	
P74/121	Watson, J. February 8, 1974	C. Carbone & Co., Inc.	66/7955	Duty assessed on 840 cases of alcoholic beverages although 6 cases of scotch whiskey were reported manifested, not found	District director ordered to reliquidate entry making allowance for duty assessed on 6 cases reported manifest, not found	Agreed statement of facts	Boston Shortage of alcoholic beverages
P74/122	Watson, J. February 8, 1974	Price Bros. Co.	65/19314	Duty assessed on 341 cartons of champagne although 2 cartons were reported manifested, not found	District director ordered to reliquidate entry making allowance for duty assessed on 2 cartons reported manifest, not found	Agreed statement of facts	Boston Shortage of alcoholic beverages
P74/123	Maletz, J. February 8, 1974	American Astral Corp.	69/52686	Item 704.85 25¢ per lb. plus 32.5%	Item 734.88 8%	American Astral Corporation v. U.S. (C.D. 3827)	New York Tennis gloves
P74/124	Maletz, J. February 8, 1974	New York Merchandise Co., Inc.	67/10145	Item 737.40 35%	Item 256.75 8.5%	Judgment on the pleadings Wilson's Customs Clearance, Inc. v. U.S. (C.D. 3061)	San Diego Paper-mache nodding head figures

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/125	Landis, J. February 11, 1974	Avins Industrial Products Corp.	73-10-02855	Item 685.90 8.5%	Item 685.25 6%	Judgment on the pleadings Avins Industrial Products Corp. v. U.S. (Abs.P 73/624)	New York Radio antenna plugs, part #1200
P74/126	Landis, J. February 11, 1974	W.J. Byrnes & Co. of New York, Inc.	67/75950	Item 523.91 15%	Item 687.60 12.5%	Summary judgment Strickland Enterprises, Inc., et al. (C.D. 4009)	New York Quartz crystal blanks
P74/127	Landis, J. February 11, 1974	Gambles Import Corp.	70/11777	Items 651.75 and 650.38 Ad valorem equivalent rate (35.42%)	Items 651.75 and 650.38 1¢ each plus 12.5%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Stainless steel flat wares, Spring Wheat pattern, 64 pcs. set
P74/128	Landis, J. February 11, 1974	Karl Schroff & Assoc., Inc., et al.	68/24867, etc.	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	Chicago Earphones
P74/129	Landis, J. February 11, 1974	Silbo Steel Corp.	70/5777	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P74/130	Landis, J. February 11, 1974	Silbo Steel Corp.	70/25326	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	Savannah Iron and steel forgings
P74/131	Landis, J. February 11, 1974	Silbo Steel Corp.	70/30447	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	New York Iron and steel forgings
P74/132	Landis, J. February 11,	Silbo Steel Corp.	70/31410, etc.	Item 610.80 14%	Item 608.25 7.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd	Jacksonville (Tampa) Iron and steel forgings

P74/131	Landis, J. February 11, 1974	Silbo Steel Corp.	70/30447	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	New York Iron and steel forgings
P74/132	Landis, J. February 11, 1974	Silbo Steel Corp.	70/31410, etc.	Item 610.80 14%	Item 608.25 7.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P74/133	Landis, J. February 11, 1974	Silbo Steel Corp.	70/42434, etc.	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773 aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P74/134	Landis, J. February 11, 1974	Venetianaire Corp. of America	67/82200	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks
P74/135	Landis, J. February 11, 1974	Venetianaire Corp. of America	67/85378	Item 748.20 28%	Item 772.15 17%	Judgment on the pleadings	New York Plastic flower shower curtain hooks
P74/136	Maletz, J. February 11, 1974	Baruch Petranker Import Co., Inc.	68/6644, etc.	Items 737.90 and 737.40 35%	Item 773.10 17%	Judgment on the pleadings Wilson's Customs Clearance Inc. v. U.S. (C.D. 3061)	San Francisco Nodding head animals
P74/137	Watson, J. February 11, 1974	Pacific Coast Commercial Inc.	67/70541	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/138	Newman, J. February 11, 1974	Ford Motor Company	70/9140, etc.	Item 657.20 15% or 13%	Item 692.30 Free of duty	Ford Motor Company v. U.S. (C.D. 4380)	Detroit Tool boxes (items marked "A") and power steering reservoirs (items marked "B")
P74/139	Ford, J. February 13, 1974	American Sanitary Rag Co. et al.	67/45144, etc.	Item 684.70 15% Item 706.40 or 706.60 20%	Item 685.22 12.5%	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (radio cases)	Chicago Earphones (which are not headphones), chiefly used with radios; and radio cases

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/140	Ford, J. February 13, 1974	Fedco, Inc., et al.	65/24364, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	Los Angeles Earphones
P74/141	Ford, J. February 13, 1974	Majestic Electronics, Inc., et al.	65/25335, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	Los Angeles Earphones
P74/142	Ford, J. February 13, 1974	New York Merchandise Co., Inc.	66/11041, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	Los Angeles Earphones
P74/143	Ford, J. February 13, 1974	New York Merchandise Co., Inc.	67/74244, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	Portland, Oreg. Earphones
P74/144	Landis, J. February 13, 1974	Otto Roth & Co., Inc., et al.	69/22456, etc.	Item 117.67 At ad valorem rate in force and effect at the time of entry of each of the shipments in the case at bar	Item 117.65 At ad valorem rate in force and effect at the time of entry of each of the shipments in the case at bar	Naumes Forwarding Service et al. v. U.S. (C.D. 3861)	New York Pecorino or Pecorino type cheese
P74/145	Ford J. February 13, 1974	Sun Coast Merchandise Corp. et al.	67/59932, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	Los Angeles Earphones

P74/145	Ford J. February 13, 1974	Sun Coast Merchandise Corp. et al.	etc.	15%	12.5%	v. U.S. (C.D. 3887)	Earphones
P74/146	Ford, J. February 13, 1974	Valiant Radio Corp.	67/46271, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	New York Earphones imported with radios with which they are used
P74/147	Ford, J. February 19, 1974	Fedtro, Inc.	67/13933, etc.	Item 790.55 20%, 18%, 16% and 14%	Item 774.60 17%, 15%, 13.5% and 11.5%	Agreed statement of facts	New York Reflectors, self-sticking plastic safety reflectors, plastic reflectors, reflector sets and words of similar description
P74/148	Ford, J. February 19, 1974	Fedtro, Inc.	69/798	Item 790.55 20%	Item 774.60 17%	Judgment on the pleadings	New York Self sticking plastic safety reflectors, Models REF-4 and REF-8
P74/149	Ford, J. February 19, 1974	Fedtro, Inc.	69/11704	Item 790.55 18%	Item 774.60 15%	Judgment on the pleadings	New York Self sticking plastic safety reflectors, Model REF-8
P74/150	Ford, J. February 19, 1974	Fedtro, Inc.	70/62730	Item 790.55 14%	Item 774.60 11.5%	Judgment on the pleadings	New York Self sticking plastic safety reflectors, Model REF-4
P74/151	Ford, J. February 19, 1974	E. J. & R. Gindi et al;	66/70198, etc.	Item 651.75 Various ad valorem equivalents set out in schedule of cases attached to decision and judgment	Item 651.75 At appropriate compound rates set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets barbeque sets, tool sets, etc.

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/152	Ford, J. February 19, 1974	The Singer Company	72-11-02476	Item 672.20 45¢ per 1000 plus 12%; or 37¢ per 1000 plus 10%	Items 670.74/ 670.29 7.5% and 6.5%	Agreed statement of facts	Chattanooga (New Orleans) Tufting needles solely used in tufting machines (which are not sewing machines); machines of the type provided in item 670.29
P74/153	Ford, J. February 19, 1974	Soderhamn Machine Manufacturing Company	61/9123, etc.	Par. 372 11½% or 10½% Par. 353 13¾%	Par. 372 8½% or 7½%	Agreed statement of facts	Portland, Oreg. Chipscreens and parts of chipscreens
P74/154	Watson, J. February 19, 1974	Aldrich Chemical Company, Inc.	73-1-00007	Item 428.26 2.1¢ per lb. plus 10%	Item 429.25 7%	Aldrich Chemical Company, Inc. v. U.S. (C.D. 4458)	Milwaukee 2,2,2-Trichloroethanol
P74/155	Watson, J. February 19, 1974	Aldrich Chemical Company, Inc.	73-1-00008	Item 428.26 1.8¢ per lb. plus 9%	Item 429.25 6%	Aldrich Chemical Company, Inc. v. U.S. (C.D. 4458)	Milwaukee 2,2,2-Trichloroethanol
P74/156	Watson, J. February 19, 1974	Aldrich Chemical Company, Inc.	73-2-00544	Item 428.26 2.1¢ per lb. plus 10%	Item 429.25 7%	Aldrich Chemical Company, Inc. v. U.S. (C.D. 4458)	Milwaukee 2,2,2-Trichloroethanol
P74/157	Watson, J. February 19, 1974	Campana Art Products, Inc., et al.	68/53870, etc.	Item 748.20 28%, 25% or 23.5%	Item 774.60 17%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.

P74/158	Watson, J. February 19, 1974	Hayman & Lindenberg, Inc.	69/42216, etc.	Item 748.20 25%	Item 774.60 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial ferns, etc.
P74/159	Watson, J. February 19, 1974	Hayman & Lindenberg, Inc.	70/33635, etc.	Item 748.20 23.5%	Item 774.60 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial ferns, etc.
P74/160	Watson, J. February 19, 1974	Edgar Moser, Inc.	67/79301, etc.	Item 748.20 26% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P74/161	Maletz, J. February 19, 1974	American Rusch Corp.	70/43079, etc.	Item 686.70 or 709.15 28.5% or 25%	Item 686.80 6% or 5.5%	American Rusch Corp. v. U.S. (C.D. 4115)	New York Electric filament lamps
P74/162	Re, J. February 19, 1974	Propper Mfg. Co., Inc.	70/10248	Item 709.05 45%	Item 709.17 10.5%	Judgment on the pleadings	New York Otoscope battery handles
P74/163	Ford, J. February 20, 1974	Castelazo & Associates, a/c Palley Supply Co. et al.	67/59700, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A attached to decision and judgment in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule.	Import Associates of America et al. v. U.S. (C.A.D. 931)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/164	Ford, J. February 20, 1974	Marubeni Iida (America), Inc.	67/31377, etc.	Item 684.70 15% (items marked "A") Item 706.08 or 791.65 20% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Radio cases (entireties) (items marked "B")
P74/165	Ford, J. February 20, 1974	National Silver Company	70/26897, etc.	Item 651.75 At various ad valorem equivalents set out in schedule A attached to decision and judgment in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.
P74/166	Ford, J. February 20, 1974	Nichimen Co., Inc.	68/24515, etc.	Item 684.70 15%	Item 685.22 12.5%	Summary judgment	Chicago Earphones

	February 20, 1974		etc.	15%	12.5%		Earphones
P74/167	Ford, J. February 20, 1974	Randa, Inc.	67/13159	Item 651.75 Various ad valorem equivalents set out in schedule A attached to decision and judgment in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule (1¢ each plus 12½%)	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets
P74/168	Maletz, J. February 20, 1974	American Laubscher Corp.	68/42735, etc.	Item 730.93 16%	Item 680.45 8%	American Laubscher Corp. et al. v. U.S. (C.D. 4006)	New York Pinions and gears and assemblies thereof
P74/169	Ford, J. March 1, 1974	Kaysons Intl., Ltd.	67/68523, etc.	Item 684.70 15% or 13%	Item 685.22 or 685.25 12.5% or 11%	U.S. v. General Electric Co. (C.A.D. 1021)	Los Angeles Earphones
P74/170	Ford, J. March 1, 197	Sanyei New York Corp.	70/63342, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	San Francisco Earphones
P74/171	Ford, J. March 1, 1974	Texoma Wholesale Jewelers	68/42252, etc.	Item 684.70 15%	Item 685.22 12.5%	U.S. v. General Electric Co. (C.A.D. 1021)	Los Angeles Earphones
P74/172	Ford, J. March 1, 1974	Z & T Importing Co., Inc.	68/67140, etc.	Item 684.70 15% or 13%	Item 685.22 or 685.25 12.5 % or 11%	U.S. v. General Electric Co. (C.A.D. 1021)	Los Angeles Earphones
P74/173	Maletz, J. March 4, 1974	Mego Corp.	68/19782, etc.	Item 737.90 35%	Item 737.55 21%	Agreed statement of facts	New York "Blocks" or "Blocks and Beads" (toy building blocks, bricks or shapes)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/174	Rao, J. March 5, 1974	Beck Distributing Corp.	308736-K, etc.	Par. 369(c) 11½%, 11% or 10½%	Par. 353 or 372 8¾%	The Beck Distributing Corp. v. U.S. (C.D. 4238)	New York Parts, in c.v. of metal, of internal combustion engines, carburetor type
P74/175	Ford, J. March 5, 1974	A.N. Derringer, Inc.	70/46878, etc.	Item 207.00 11.5%	Item 202.53 2%	Agreed statement of facts	Champlain-Rouses Point Glued lumber panels described as aspen panels
P74/176	Ford, J. March 5, 1974	Randa, Inc., et al.	67/8286, etc.	Item 651.75 At various ad valorem equivalents set out in schedule of cases attached to decision and judgment	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbecue sets, tool sets, etc.
P74/177	Ford, J. March 5, 1974	Reedy Forwarding Co.	69/30865, etc.	Item 148.15 35%	Item 148.25 14%	United Purveyors, Inc. v. U.S. (C.A.D. 1081)	Miami "Honey Rock Melons"
P74/178	Ford, J. March 5, 1974	Sony Corporation of America	66/58673, etc.	Item 684.70 15% (items marked "A") Item 706.08 20% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3337 aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones and jacks (items marked "A" Cases for transistor radios (entireties with radios) (items marked "B")

P74/179	Landis, J. March 5, 1974	National Silver Co.	68/31438, etc.	Item 533.75 10¢ per doz. pcs. plus 60%; or 9¢ per doz. pcs. plus 54%	Item 533.71 45% or 40%	U.S. v. National Silver Co. (C.A.D. 1040)	San Diego Mugs
P74/180	Watson, J. March 5, 1974	Bowl-O-Beauty Company et al.	70/52737, etc.	Item 748.20 28% or 25%	Item 774.60 17% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Chicago Artificial flowers, etc.
P74/181	Watson, J. March 5, 1974	R. J. Saunders & Co., Inc.	62/15451, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/182	Watson, J. March 5, 1974	R. J. Saunders & Co., Inc.	66/19931, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/183	Re, J. March 5, 1974	A & P Import Co.	71-6-00384	Item 772.15 15% or 11.5%	Item 772.35 11% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1064)	New York Mattress and pillow covers
P74/184	Ford, J. March 7, 1974	W. J. Byrnes & Co. of L.A., Inc., a/c A. Cohen & Sons Corp.	67/8175	Item 651.75 Ad valorem equivalent rate of 31.547%	Item 651.75 1¢ each plus 12.5%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angales Flatwaresets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/185	Ford, J. March 7, 1974	Kinoshita & Co., Ltd., U.S.A., et al.	68/34116, etc.	Item 706.60 or 706.08 20% (radio cases)	Cases properly dutiable as entireties with radios under item 685.22; no appraised value found for entirety; merchandise not appraised according to law; liquidations void; protests dismissed as premature; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Cases imported with radios
P74/186	Ford, J. March 7, 1974	Montgomery Ward & Co. et al.	66/21834, etc.	Item 706.08 or 706.60 20%	Cases properly dutiable as entireties with radios under item 685.22; no appraised value found for entirety; merchan-	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Cases imported with radios

					dise not appraised according to law; liquidations void; protests dismissed as premature; entries returned to regional commissioner for appropriate administrative action		
P74/187	Ford, J. March 7, 1974	The West Coast Mercantile Co.	67/4398	Items 651.75 and 649.05 Equivalent ad valorem rate of 63.6%	Items 651.75 and 649.05 28¢ per doz.	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles 3 pc. file set
P74/188	Ford, J. March 7, 1974	The West Coast Mercantile Co.	67/8285	Items 651.75 and 649.05 Equivalent ad valorem rate of 51%	Items 651.75 and 649.05 28¢ per doz.	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles 3 pc. file set
P74/189	Ford, J. March 7, 1974	The West Coast Mercantile Co.	68/20647	Items 651.75 and 649.05 Equivalent ad valorem rate of 43.2760%	Items 651.75 and 649.05 28¢ per doz.	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles 3 pc. file set
P74/190	Watson, J. March 7, 1974	Hayman & Lindenberg, Inc.	68/67702, etc.	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial ferns, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/191	Watson, J. March 7, 1974	Kaytee Imports, Inc:	68/16454, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc.
P74/192	Watson, J. March 7, 1974	Edward P. Pane & Co., Inc., et al.	67/46142, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P74/193	Watson, J. March 7, 1974	Rice Bayersdorfer Co.	69/37511	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Philadelphia Artificial flowers, etc.
P74/194	Watson, J. March 7, 1974	R. J. Saunders & Co., Inc.	62/10745	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v.U.S. (C.D. 4387)	New York Shaver cases
P74/195	Watson, J. March 7, 1974	R. J. Saunders & Co., Inc.	66/55698	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases

P74/196	Watson, J. March 7, 1974	Silbro Lamp Company et al.	67/6351, etc.	Item 748.20 28% (items marked "A" "B" or "C")	Item 774.60 17% (items marked "A" and "C") Item 772.97 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "C")	Philadelphia Artificial flowers, etc. (Items marked "A" and "C". Mistletoe and holly floral arrangements (items marked "B")
P74/197	Maletz, J. March 7, 1974	George S. Bush & Co., Inc.	69/16803	Item 708.00 38%	Item 722.50 31%	G.A.F. Corp. et al. v. U.S. (C.D. 4269)	Portland, Oreg. Small disks of heat filter glass
P74/198	Ford, J. March 13, 1974	National Silver Company	71-9-01147	Item 533.75 10¢ per doz. pcs. plus 60% or 9¢ per doz. pcs. plus 54%	Item 553.71 45% or 40%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	Boston Mugs, of non-bone chinaware or of sub-porcelain
P74/199	Ford, J. March 13, 1974	The Westbrass Co.	71-10-01256	Item 657.20 13%	Item 653.95 11.5%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Stainless steel sink strainers and stainless steel tray plugs with long shanks
P74/200	Watson, J. March 13, 1974	S. Berger Import & Mfg. Corp.	66/21290-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/201	Watson, J. March 13, 1974	H.I.I. Corporation	70/22486	Item 380.39 19% on 100 cartons of boys' cotton-nylon twill pants	Regional commissioner directed to reliquidate entry and refund duties assessed on 51 cartons reported as manifested, not found	Summary judgment	New York Shortage of boys' cotton-nylon twill pants
P74/202	Watson, J. March 13, 1974	Westwood Import Co., Inc.	67/46355, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Houston Artificial flowers, etc.
P74/203	Ford J. March 18, 1974	Air Sea Forwarders, Inc., a/c California Typewriter Exchange	62/15846, etc.	Par. 353 17½% or 15%	Par. 353 13¾%, 12½% or 11½%	Pacific Instruments Corp. v. U.S. (C.D. 4028)	Los Angeles Microphones, earphones, telephone adapters and foot controls
P74/204	Ford J. March 18, 1974	North American Foreign Trading Corp.	66/21095, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/205	Ford J. March 18, 1974	Superscope, Inc., et al.	63/1116, etc.	Par. 353 17½%	Par. 353 13¾%, 12½% or 11½%	Pacific Instruments Corp. v. U.S. (C.D. 4028)	Los Angeles Microphones, earphones, telephone adapters and foot controls

P74/206	Landis, J. March 18, 1974	Maxter Metals Corp.	66/31576, etc.	Item 610.80 19% or 17%	Item 608.25 10.5% or 9.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Forgings of iron or steel, not machined, not tooled, and not otherwise processed after forging
P74/207	Maletz, J. March 18, 1974	Grizzly Corporation	72-7-01632	Item 652.35 13% or 11%	Item 652.30 0.3¢ per lb.	Grizzley Corporation v. U.S. (C.D. 4460)	Baltimore Chains
P74/208	Maletz, J. March 18, 1974	Grizzly Corporation	73-4-00914	Item 652.35 13%	Item 652.30 0.3¢ per lb.	Grizzly Corporation v. U.S. (C.D. 4460)	New Bedford (Boston) Chains
P74/209	Newman, J. March 18, 1974	Durst Industries, Inc.	71-11-01820	Item 657.20 13% (as entireties)	Item 653.95 11.5% (inserts) Item 657.20 13% (strainers) Export value: Strainers: 35¢ each, packed Inserts: 23¢ each, packed	The Westbrass Company v. U.S. (C.D. 4293)	New York Post inserts for duo strainers and strainers
P74/210	Newman, J. March 18, 1974	Norca Corp.	71-8-00919	Item 657.35 10.5% plus 8/10¢ per lb. (items marked "A") Item 657.20 13% (items marked "B")	Item 654.00 7% (items marked "A") Item 653.95 11.5% (items marked "B")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A" and "B")	New York Brass shower stall strainers (not including the bases) (items marked "A") Duplex strainers (not including the bases) (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/211	Newman, J. March 18, 1974	J. C. Penney Purchasing Corp.	65/25354, etc.	Item 706.60 20%	Cases properly appraisable and classifiable under item 685.22 as entireties with the radios and walkie talkies with which imported; appraisement and liquidation null and void; protests premature and dismissed; entries returned to district director for further administrative action	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Cases imported with radios and walkie talkies (entireties)

P74/212	Newman, J. March 18, 1974	J. C. Penney Purchasing Corp. et al.	65/2779, etc.	Item 706.08 or 706.60 20%	Leather and vinyl cases properly appraisable and classifiable under item 685.22 as entireties with radios and walkie talkies with which imported; appraisement and liquidation null and void; protests premature and dismissed; entries returned to district director for further administrative action	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	San Francisco Leather and vinyl cases imported with radios and walkie talkies (entireties)
P74/213	Newman, J. March 18, 1974	Wal Rich Corp.	66/14875, etc.	Item 657.35 1.275¢ per lb. plus 15% or 1¢ per lb. plus 13.5%	Item 654.00 10%	The Westbrass Company v. U.S. (C.D. 4293)	New York Duo strainers, duplex sink strainers, showerstall strainers, overflows, etc.
P74/214	Rao, J. March 20, 1974	Amity Fabrics, Inc.	63/6311, etc.	Par. 904(c) 17¼%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Cotton suede cloth with a water-repellent finish
P74/215	Ford, J. March 20, 1974	Craig Panorama, Inc., et al.	65/19702, etc.	Par. 353 17½% or 15%	Par. 353 13¾%, 12½% or 11½%	Pacific Instruments Corp. v. U.S. (C.D. 4023)	Los Angeles Microphones, earphones, telephone adapters and foot controls

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/216	Richardson, J. March 20, 1974	American Honda Motor Co., Inc.	67/4350	Item 692.55 12%	Item 727.06 8.5%	Agreed statement of facts	Los Angeles Seats for motorcycles which constitute furniture designed for motor vehicle use or parts thereof
P74/217	Richardson, J March 20, 1974	American Honda Motor Co., Inc.	67/52828, etc.	Item 692.55 12%	Item 727.06 8.5%	Agreed statement of facts	Los Angeles Motorcycle seats and parts thereof
P74/218	Maletz, J. March 20, 1974	J. E. Bernard & Co., Inc.	70/46731	Item 722.50 28%	Item 722.80 15%	J.E. Bernard & Co., Inc. v. U.S. (C.D. 4215)	Chicago Autoload film cartridges
P74/219	Newman, J March 20, 1974	Gambles Import Corp. et al.	70/2581, etc.	Item 651.53 3.5¢ per lb. plus 17%; 3¢ per lb. plus 15%; 2.5¢ per lb. plus 13.5%; or 2.4¢ per lb. plus 11.5% Item 654.10 3.1¢ per lb. plus 15%; 2.8¢ per lb. plus 13.5%; or 2.4¢ per lb. plus 11.5%	Item 649.57 17%, 15%, 13.5% or 11.5%	Arbor Import Corp. v. U.S. (C.D. 3955)	San Diego Ice cream scoops
P74/220	Watson, J.	Robert Bosch Corp. et al.	67/83385,	Item 685.90	Item 683.60	Robert Bosch Corp. v. U.S.	San Francisco

				per lb. plus 11.5%			
P74/220	Watson, J. March 27, 1974	Robert Bosch Corp. et al.	67/83385, etc.	Item 685.90 17.5% or 15.5%	Item 683.60 8.5% or 7.5%	Robert Bosch Corp. v. U.S. (C.D. 3381)	San Francisco Solenoid switches
P74/221	Richardson, J. March 29, 1974	National Silver Company	72-3-00615	Item 533.75 60% plus 10¢ per doz. pcs.; or 48% plus 8¢ per doz. pcs.	Item 533.71 45% or 36%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	New Bedford (Boston) Mugs of non-bone chinaware or of sub-porcelain
P74/222	Watson, J. March 29, 1974	The American Import Co.	67/83200	Item 748.20 28%	Item 774.60 17%	Summary judgment	Philadelphia Artificial flowers, etc.
P74/223	Watson, J. March 29, 1974	The American Import Co.	68/49796	Item 748.20 28%	Item 774.60 17%	Summary judgment	Philadelphia Artificial flowers, etc.
P74/224	Watson, J. March 29, 1974	First American Natural Ferns Co., Inc.	67/25709, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P74/225	Watson, J. March 29, 1974	Rice Bayersdorfer Co.	67/79922, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Philadelphia Artificial flowers, etc. (items marked "A" and and "B")

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/226	Watson, J. March 29, 1974	R. J. Saunders & Co., Inc.	65/17741, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/227	Watson, J. March 29, 1974	Zee International, Inc.	72-6-01234	Item 355.82 15¢ per lb. plus 18%	Item 355.81 7%	Agreed statement of facts	Los Angeles PVC Nontopping Sponge Leather (woven or knit fabrics of man made fibers coated or filled with rubber or plastic material, or 70% by weight of rubber or plastic)
P74/228	Newman, J. March 29, 1974	Durst Industries, Inc.	66/50681, etc.	Item 657.35 1.275¢ per lb. plus 15% (items marked "A" and "D")	Item 654.00 10% (items marked "A") Liquidations void; entries in schedule B, attached to decision and judgment, remanded to regional commissioner for administrative action not inconsistent with judgment (items marked "D")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A" and "D")	New York Shower heads and sink or shower fixtures (items marked "A") Combination basket strainers, consisting of a basket insert replacement cup, as well as a base (items marked "D")
P74/229	Ford, J. April 9, 1974	A & A Trading Corp. et al.	67/5436, etc.	Item 684.70	Item 685.22	Transamerican Electronics	New York

P74/229	Ford, J. April 9, 1974	A & A Trading Corp. et al.	67/5436, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/230	Ford, J. April 9, 1974	Topp Import & Export, Inc.	68/17535, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/231	Watson, J. April 9, 1974	Copy Cats Trading Co. et al.	67/54999(A), etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovitz, Inc. v. U.S. (C.D. 4396)	Los Angeles Plastic artificial flowers, etc. (articles constructed or assembled and used in the same manner as merchandise in cited cases)
P74/232	Watson, J. April 9, 1974	International Artware Corporation	70/63039	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/233	Watson, J. April 9, 1974	Mar-Lyn Imports, Inc.	70/23129, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovitz, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves, etc.
P74/234	Watson, J. April 9, 1974	Pacific Coast Commercial, Inc.	67/54957, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/235	Watson, J. April 9, 1974	Pacific Coast Commercial, Inc.	67/70465, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/236	Watson, J. April 9, 1974	Reliance Trading Corp.	67/4713, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Artificial flowers, etc.
P74/237	Watson, J. April 9, 1974	R. J. Saunders & Co., Inc.	65/1766, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/238	Ford, J. April 10, 1974	A & A Trading Corp	67/35084, etc.	Item 684.70 15% or 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones, listening devices, etc.
P74/239	Watson, J.	J. Kinderman & Sons et al.	67/6390,	Item 748.20	Item 774.60	Armbee Corporation et al.	Philadelphia

	April 10, 1974		etc.	15% or 13%	12.5% Item 685.25 11%	Corp. et al. v. U.S. (C.D. 4405)	Earphones, listening devices, etc.
P74/239	Watson, J. April 10, 1974	J. Kinderman & Sons et al.	67/6390, etc.	Item 748.20 28% (items marked "A", "B" or "C")	Item 774.60 17% (items marked "A" and "C") Item 772.97 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "C")	Philadelphia Artificial flowers, etc. (items marked "A" and "C") Mistletoe and holly floral arrangements (items marked "B")
P74/240	Watson, J. April 10, 1974	R. J. Saunders & Co., Inc.	64/13279, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/241	Newman, J. April 10, 1974	Air Sea Forwarders, a/c Olimpia Products, Inc., et al.	67/13164, etc.	Item 657.20 19% or 17% (items marked "A"); 19%; 17% or 15% (items marked "C")	Item 653.95 17% or 15% (items marked "A"); 17%, 15% or 13.5% (items marked "C")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459); Davies, Turner & Company v. U.S. (Abs. 69651); The Westbrass Company v. U.S. (C.D. 4293) (items marked "C")	Los Angeles Shower heads or shower drains, used as shower fixtures or parts of showers (items marked "A") Sink strainers with insert baskets, flat sink strainers, and replacement insert baskets for strainers of iron or steel (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/242	Ford, J. April 11, 1974	Selectron International Corp.	68/20725, etc.	Item 684.70 15%	Item 685.22 12.5%	Summary judgment General Electric Company v. U. S. (C.D. 3887 aff'd C.A.D. 1021)	Chicago Earphones
P74/243	Richardson, J. April 11, 1974	Baylis Brothers Co.	71-6-00280	Item 382.04 42.5% Item 382.00 28%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts)	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts

Entries 100320, 100321, 101985,

			American components (fabric pieces of dress fronts)

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/244	Watson, J. April 11, 1974	R. J. Saunders & Co., Inc.	64/1910	Par. 397 19%	Par. 353 13 ¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/245	Watson, J. April 11, 1974	Carson M. Simon & Co. et al.	70/15219, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Philadelphia Artificial flowers, etc.
P74/246	Watson, J. April 11, 1974	Verona Dyestuffs Division, Verona-Pharma Chemical Corp.	71-6-00362-8	Item 409.00 40% plus 6.3¢ per lb.	Item 405.25 16% plus 2.5¢ per lb.	Verona Dyestuffs Div. of Verona-Pharma Chemical Corp. v. U.S. (C.D. 4309)	New York Urethane Black Paste AU
P74/247	Maletz, J. April 11, 1974	G. C. Murphy	67/84966	Item 380.27 25%	Duty should not have been assessed on 17 cases of shirts reported as "manifested, not found"	Agreed statement of facts	New York Shortage of 17 cases of shirts
P74/248	Newman, J. April 11,	Hancock Gross, Inc.	67/08767, etc.	Item 657.20 19% or 17%	Separate appraisements not	The Westbrass Company v. U.S. (C.D. 4293) (Items	Philadelphia Articles in c.v. of iron or

					not found"		
P74/248	Newman, J. April 11, 1974	Hancock Gross, Inc.	67/68767, etc.	Item 657.20 19% or 17% (items marked "B" and "C")	Separate appraisements not made; liquidations premature; district director ordered to take administrative action not inconsistent with decision (items marked "B") Item 653.95 17% or 15% (items marked "C")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "B" and "C")	Philadelphia Articles in c.v. of iron or steel: strainers and tray plugs (items marked "B"); shower heads, drains and sink and shower accessories (items marked "C")
P74/249	Ford, J. April 17, 1974	Oriental Exporters, Inc.	67/68866, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/250	Richardson, J. April 17, 1974	Baylis Brothers Co.	67/25020, etc.	Item 382.03 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts
P74/251	Richardson, J. April 17, 1974	Baylis Brothers Co.	67/25063, etc.	Item 382.03 42.5%	Item 807.00 Upon full	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned;

					value of fabric pieces		
P74/251	Richardson, J. April 17, 1974	Baylis Brothers Co.	67/25083, etc.	Item 382.03 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/252	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/6083, etc.	Item 382.03 42.5% Item 382.00 41% or 39% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts
P74/253	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/46398, etc.	Item 382.00 38%, 39%, or 41%	Item 807.00 Upon full value	U.S. v. The Baylis Brothers	San Juan

					value of fabric pieces		
P74/253	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/46308, etc.	Item 382.00 38%, 39%, or 41% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/254	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/63466, etc.	Item 382.00 41% or 39% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts
P74/255	Richardson, J. April 17, 1974	Baylis Brothers Co.	69/25316, etc.	Item 382.00 39% or 41%	Item 807.00 Upon full value	U.S. v. The Baylis Brothers	San Juan

P74/255	Richardson, J. April 17, 1974	Baylis Brothers Co.	69/25316, etc.	Item 382.00 39% or 41% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/256	Richardson, J. April 17, 1974	Baylis Brothers Co.	69/37554, etc.	Item 382.00 39% or 41% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values returned by customs official; entries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress goods
P74/257	Maletz, J. April 17, 1974	American Rusch Corp.	70/56729	Item 686.70 or 709.15 28.5% or 25%	Item 686.80 6% or 5.5%	American Rusch Corp. v. U.S. (C.D. 4115)	New York Electric filament lamps (laryngoscope lamps) solely used with laryngoscope blades
P74/258	Re, Jr. Apr 17, 1974	Venetianaire Corp. of America	66/38254, etc.	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D.	New York

	April 17, 1974			28.5% or 25%			solely used with laryngoscope blades
P74/258	Re, J. Apr 17, 1974	Venetianaire Corp. of America	66/38254, etc.	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow cover
P74/259	Re, J. April 17, 1974	Thomas Joseph Welsh Forest Products	70/14962	Item 727.40 11.6%	Item 202.53 2%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	New Orleans Drawer sides and backs or lumber
P74/260	Richardson, J. April 19, 1974	Torch Manufacturing Co., Inc.	67/27483	Par. 353 35% (as entireties)	Separate values not returned; protest dismissed as premature; entry returned to district director for further administrative action	Summary judgment	Los Angeles Batteries and flashlights (separate entities)
P74/261	Maletz, J. April 19, 1974	B. Jadow & Sons, Inc.	71-10-01538	Item 445.10 14% plus 1.9¢ per lb., and 12% plus 1.6¢ per lb.	Item 494.60 3%	Agreed statement of facts	New York Aron Alpha Adhesive
P74/262	Newman, J. April 19, 1974	World Famous Sales Co.	67/9740	Item 206.97 or 207.00 16¾%	Item 727.35 10.5%	The American Import Co. et al. v. U.S. (C.D. 3807)	Chicago Gunracks
P74/263	Re, J. April 19, 1974	A & P Import Co., Inc.	71-9-01162	Item 772.15 15%	Item 772.35 11%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/264	Re, J. April 19, 1974	Venetianaire Corp. of America	72-4-00789	Item 772.15 11.5% or 10%	Item 772.35 8.5% or 7%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/265	Rao, J. April 22, 1974	E. Dillingham, Inc.	73-6-01515	Item 309.30 8.5¢ per lb.	Item 309.75 7.5%	E. Dillingham, Inc. v. U.S. (C.D. 4406)	Alexandria Bay (Ogdensburg) Nylon 66, advanced waste in tow form
P74/266	Maletz, J. April 22, 1974	Technicon Corporation	72-6-01438	Item 547.55 29.5%	Item 547.53 14%	Agreed statement of facts.	New York Mixing coils (quartz glass) (containing over 95% silica by weight)
P74/267	Re, J. April 22, 1974	A & P Import Co.	72-2-00354	Item 772.15 10% or 11.5%	Item 772.35 7% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/268	Re, J. April 22, 1974	C. Tennant Sons & Co. of N. Y.	72-11-02359	Item 772.15 10% or 8.5%	Item 772.35 7% or 6%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/269	Ford, J. May 1, 1974	Marubeni Iida (America), Inc. et al.	63/19022,	Par. 1531 or 1531/	Par. 353	Judgment on the pleadings	San Francisco

	April 22, 1974	N. Y.		10% or 8.5%	7% or 6%	ica v. U.S. (C.A.D. 1084)	mattress and pillow covers
P74/269	Ford, J. May 1, 1974	Marubeni Iida (America), Inc., et al.	63/19022, etc.	Par. 1531 or 1531/1559(a) 20% (cases)	Par. 353 12½% (as entireties with radios) No appraised value found for entirety (radios and cases); merchandise not appraised and liquidated according to law; liquidations void; actions dismissed as premature; entries returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	San Francisco Radio cases imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/270	Ford, J. May 1, 1974	Nomura (America) Corp..	65/6747, etc..	Par. 353 15% (earphones) Par. 1531 or 1531/1559(a) 20% (cases)	Par. 353 13¾% or 12½% (earphones) Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidations void; actions dismissed as premature; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (earphones) Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (radio cases)	New York Earphones (electrical articles) Cases imported with radios (entireties)
P74/271	Ford, J. May 1, 1974	North American Foreign Trading Corp. et al	65/18430, etc.	Par 1531 or 1531/	Par. 353	Judgment on the pleadings	New York

P74/271	Ford, J. May 1, 1974	North American Foreign Trading Corp. et al.	65/18430, etc.	Par 1531 or 1531/1559(a) 20% (cases)	Par. 353 12½% (as entireties with radios) No appraised value found for entirety (radios and cases); merchandise not appraised and liquidated according to law; liquidations void; actions dismissed as premature; entries returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/272	Ford, J. May 1, 1974	Oriental Exporters, Inc., et al.	68/2044, etc.	Par. 1531 or 1531/1559(a) 20% (cases)	Par. 353 12½% (as entireties with radios) No appraised value found for entirety (radios and cases); merchandise not appraised and liquidated according to law; liquidations void; actions dismissed as premature; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios
P74/273	Ford, J. May 1, 1974	Transamerican Import & Export, Inc.	69/45198	Par. 1531 or 1531/1559(a)	Par. 353 12½% (as en-	Judgment on the pleadings Lafayette Radio Electronics	Chicago Radio cases imported with

P74/273	Ford, J. May 1, 1974	Transamerican Import & Export, Inc.	66/45198	Par. 1531 or 1531/1559(a) 20% (cases)	Par. 353 12½% (as entireties with radios) No appraised value found for entirety (radios and cases); merchandise not appraised and liquidated according to law; liquidations void; action dismissed as premature; entries returned to district director for appropriate administrative action	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Chicago Radio cases imported with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/274	Richardson, J. May 1, 1974	The Baylis Brothers Co.	71-9-01221	Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts) Dutiable values of dress fronts are entered values, less values for fabricated components of U.S. assembled abroad into the dress fronts at such values as set forth on invoices under heading "Value of Material and Thread", plus 15¢ per doz. dress fronts	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts
P74/275	Richardson, J. May 1, 1974	Verona Dyestuffs Division Verona-Pharma Chemi-	69/10140	Item 406.50 40%	Item 405.25 18% plus 2.8¢	Judgment on the pleadings Verona Dyestuffs Div. of	New York

					"Thread", plus 15¢ per doz. dress fronts		
P74/275	Richardson, J. May 1, 1974	Verona Dyestuffs Division Verona-Pharma Chemical Corp.	69/10140	Item 406.50 40%	Item 405.25 18% plus 2.8¢ per lb.	Judgment on the pleadings Verona Dyestuffs Div. of Verona-Pharma Chemical Corp. v. U.S. (C.D. 4369)	New York Urethane Black Paste AU
P74/276	Maletz, J. May 1, 1974	Dynasty of Hong Kong, Ltd.	69/4594, etc.	Item 382.05 38% (items marked "A") Item 382.04 42.5% (items marked "B")	Item 382.81 27.5% plus 25¢ per lb. (items marked "A" or "B")	Agreed statement of facts	New York Quilted robes of man-made fibers
P74/277	Ford, J. May 2, 1974	Chori New York, Inc., et al.	66/12366, etc.	Par. 353 15% (earphones) Par. 1531 or 1531/1559(a) 20% (cases)	Par. 353 13¾%, 12½% or 11½% (earphones) Radio cases dutiable as entireties with radios with which imported; no appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidations void; actions dismissed as premature; entries returned to regional commissioner for appropriate administrative action	Judgment on the pleadings Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3368) (earphones) Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (radio cases)	New York Earphones (electrical articles) Cases imported with radios (entireties)

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/278	Richardson, J. May 2, 1974	General Instrument Corporation	71/167	Item 687.60 11%	Item 807.00 Cost or value of American fabricated components (bead lead assembly, glass case assembly, gold whisker wire, solder preform, germanium wafer, and tin anode) to be deducted from appraised value of imported diodes	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062 and 1106; C.D.'s 4408 and 4422)	New York American goods returned; diodes
P74/279	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	65/14144, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Houston Shell Alexia Oil A
P74/280	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	65/14323, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	New Orleans Shell Alexia Oil A
P74/281	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	65/19860, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Philadelphia Shell Alexia Oil A
P74/282	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	65/25993, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Jacksonville (Tampa) Shell Alexia Oil A
P74/283	Landis, J.	Asiatic Petroleum Corp.					

P74/282	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	65/25993, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Jacksonville (Tampa) Shell Alexia Oil A
P74/283	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	66/4548, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Norfolk Shell Alexia Oil A
P74/284	Landis, J. May 2, 1974	Asiatic Petroleum Corp.	67/84358, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Baltimore Shell Alexia Oil A
P74/285	Watson, J. May 2, 1974	Decorative Creations & Art Flowers Co. et al.	67/46281, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4306)	New York Artificial flowers, etc.
P74/286	Watson, J. May 2, 1974	North American Philips Co., Inc.	60/24065, etc.	Par. 397 20% or 19%	Par. 353 13¾%	R.J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco-Oakland Shaver cases
P74/287	Watson, J. May 2, 1974	Queen City Wreath Co.	68/58149	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4306)	Cleveland Artificial flowers, etc.
P74/288	Watson, J. May 2, 1974	Rice Bayersdorfer Co.	67/6413—S, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.

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P74/289	Watson, J. May 2, 1974	R.J. Saunders & Co., Inc.	63/4130	Par. 397 19%	Par. 353 13¾%	R.J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	New York Shaver cases
P74/290	Watson, J. May 2, 1974	Verona Dyestuffs Division Verona-Pharma Chemical Corp.	67/28036, etc.	Item 409.00 45% plus 7¢ per lb. or 40% plus 6.3¢ per lb.	Item 405.25 18% plus 2.8¢ per lb. or 16% plus 2.5¢ per lb.	Judgment on the pleadings Verona Dyestuffs Div. of Verona-Pharma Chemical Corp. v. U.S. (C.D. 4369)	New York Urethane Black Paste AU and Urethane White Paste U
P74/291	Maletz, J. May 2, 1974	S.G.B. Epic Co., Inc.	73-7-01684	Item 657.20 9.5%	Item 664.10 5%	Agreed statement of facts	New York Vertical steel shores
P74/292	Maletz, J. May 2, 1974	Verrazzano Trading Corp.	72-8-01706	Item 332.40 18%	Duty should not have been assessed on certain cartons of fabric reported as "manifested, not found"	Agreed statement of facts	New York Shortage of cartons of fabric
P74/293	Re, J. May 2, 1974	Venetianaire Corp. of America	72-8-01801	Item 772.15 10% or 8.5%	Item 772.35 7% or 6%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/294	Landis, J. May 9, 1974	Asiatic Petroleum Corp.	66/49, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	San Francisco Shell Alexia Oil A
P74/295	Watson, J.	Allied Display Materials,	67/29788,	Item 748.20	Item 774.60	Armbee Corporation et al. v.	New York

P74/294	Landis, J. May 9, 1974	Asiatic Petroleum Corp.	66/49, etc.	Par. 1558 10%	Par. 1733 Free of duty	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	Shell Alexia Oil A
P74/295	Watson, J. May 9, 1974	Allied Display Materials, Inc.	67/29788, etc.	Item 748.20 28% (items marked "A"); 25% (items marked "B")	Item 774.60 17% (items marked "A") Item 772.97 13.5% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B")	New York Artificial flowers, etc. (items marked "A") Mistletoe and holly floral arrangements (items marked "B")
P74/296	Newman, J. May 9, 1974	Hancock-Gross, Inc.	73-3-00677	Item 657.80 13% or 11%	Item 654.20 11.5% or 10%	The Westbrass Company v. U.S. (C.D. 4293)	Philadelphia Showerheads
P74/297	Re, J. May 9, 1974	James Betesh Import Co. et al.	66/23528, etc.	Item 772.15 17%	Item 772.35 12.5%, 11%, 10% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Vinyl mattress and pillow covers
P74/298	Ford, J. May 10, 1974	North American Foreign Trading Corp.	65/15071, etc.	Par. 1531 or 1531/1559(a) 20%	Par. 353 12½%	Judgment on the pleadings Lafayette Radio Electronics Corp., v. U.S. (C.A.D. 977)	New York Radio cases (entireties with radios)
P74/299	Ford, J. May 10, 1974	Selectron International Corp.	69/16776, etc.	Item 684.70 15%, 13% or 12%	Item 685.22 12.5% Item 685.25 11% or 10%	Summary judgment General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	Chicago Earphones
P74/300	Richardson, J. May 10, 1974	Ross Products, Inc.	65/3325	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Tampa Bird cages with flowers and lights

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P74/301	Watson, J. May 10, 1974	Zunold Trading Corp.	69/32208, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A") Item 772.97 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Agreed statement of facts (items marked "B")	Wilmington, N.C. Holly sprays (items marked "A") Christmas ornaments in c.v. of rubber or plastics (items marked "B")
P74/302	Maletz, J. May 10, 1974	Heyman Housewares, Inc.	71-11-01697	Item 203.30 13.9¢ per lb. plus 11%	Item 206.97 11.5%	Judgment on the pleadings	San Francisco Salad bowls composed of woven wooden veneers bound together with synthetic plastic materials formed by heat and pressure
P74/303	Maletz, J. May 10, 1974	The Logan Company	71-11-01704	Item 203.30 13.9¢ per lb. plus 11%	Item 206.97 11.5%	Judgment on the pleadings	San Francisco Salad bowls composed of woven wooden veneers bound together with synthetic plastic materials formed by heat and pressure
P74/304	Rao, J. May 13, 1974	Allura Imports, Inc., et al.	72-3-00557, etc.	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/305	Richardson, J.	Macy's of California.	65/275	Items 651.75/	Items 651.75/	Decision and judgment	

P74/304	Rao, J. May 13, 1974	Allura Imports, Inc., et al.	72-3-00557, etc.	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/305	Richardson, J. May 13, 1974	Macy's of California.	65/275	Items 651.75/ 927.50 27.3% (ad valorem equivalent rate)	Items 651.75/ 927.50 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/306	Richardson, J. May 13, 1974	Macy's of California Div. of R. H. Macy	67/9594	Items 651.75/ 650.21 and 650.49 21.19%, 28.13% and 21.16% (ad valorem equivalent rates)	Items 651.75/ 650.21 and 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar and kitchen sets
P74/307	Richardson, J. May 13, 1974	Standard Specialty Co.	67/331	Items 651.75/ 650.45 and 650.49 17.62% and 25.31% (ad valorem equivalent rates)	Items 651.75/ 650.45 As sets at 2¢ each plus 12.5% (carving sets) Items 651.75/ 650.49 As sets at 1¢ each plus 17.5% (bar sets)	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Carving and bar sets
P74/308	Richardson, J. May 13, 1974	Standard Specialty Co.	70/2360	Items 651.75/ 650.21 21% (ad valorem equivalent rate)	Item 651.75/ 650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Snack sets

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P74/309	Ford, J. May 14, 1974	Fedtro, Inc.	69/52440, etc.	Item 790.55 20%, 18%, 16% and 14%	Item 774.60 17%, 15%, 13.5% and 11.5%	Agreed statement of facts	New York Reflectors, self-sticking plastic safety reflectors, plastic reflectors, reflector sets, etc. (articles of rubber or plastics)
P74/310	Richardson, J. May 14, 1974	Standard Specialty Co.	67/33027	Items 651.75/ 650.45 22.17% (ad valorem equivalent rate)	Items 651.75/ 650.45 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco BBQ sets
P74/311	Richardson, J. May 14, 1974	Standard Specialty Co.	68/161	Items 651.75/ 650.21 21.89% (ad valorem equivalent rate)	Items 651.75/ 650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco BBQ sets
P74/312	Richardson, J. May 14, 1974	Standard Specialty Co.	68/11240	Items 651.75/ 650.21 20.16% (ad valorem equivalent rate)	Item 651.75/ 650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Carving sets

P74/313	Richardson, J. May 14, 1974	Standard Specialty Co.	68/23697	Items 651.75/650.49 28.18% (ad valorem equivalent rate)	Items 651.75/650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/314	Richardson, J. May 14, 1974	Standard Specialty Co.	68/23699	Items 651.75/650.21 33.61% (ad valorem equivalent rate)	Items 651.75/650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Cheese board sets
P74/315	Landis, J. May 14, 1974	Arthur J. Humphreys	67/84430, etc.	Item 536.15 20%	Item 532.11 50¢ per 1,000 pcs.; 40¢ per 1,000 pcs.; 30¢ per 1,000 pcs.	Arthur J. Humphreys v. U.S. (C.D. 4098)	Sumas (Seattle) Brick-shaped products called "Kilgard acid straights," "Kilgard acid large straighis," and Kilgard acid keys"
P74/316	Maletz, J. May 14, 1974	Wheeler & Miller, a/c Shelford, Inc., et al.	59/23407, etc.	Par. 409 30%, 25½%, 27% or 28½% (items marked "A" and "B")	Par. 412 20%, 19%, 18% and 17% (items marked "A") Par. 412 12½%, 11½%, 11% and 10½% (items marked "B")	Hurricane Import Co. et al. v. U.S. (C.D. 4173) (items marked "A") Agreed statement of facts (items marked "B")	San Francisco Partly finished rattan chair frames (items marked "A") Partly finished rattan sofas and sectionals requiring an addition of seats or backs for use (unfinished furniture) (items marked "B"
P74/317	Re, J. May 14, 1974	J. Gerber & Co., Inc., et al.	68/32657, etc.	Item 772.15 17%, 15%, 13.5% or 11.5%	Item 772.35 12.5%, 11%, 10% and 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Vinyl mattress and pillow covers

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P74/318	Re, J. May 14, 1974	C. Itoh & Co. (America), Inc., et al.	67/64753, etc.	Item 772.15 17%, 15%, 13.5% and 11.5%	Item 772.35 12.5%, 11%, 10% and 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Vinyl mattress and pillow covers
P74/319	Rao, J. May 16, 1974	General Electric Co.	71-8-00666, etc.	Item 684.70 12%, 10% or 9%	Item 685.25 10%, 8.5% or 7%	Summary judgment	San Francisco Earphones
P74/320	Ford, J. May 16, 1974	New York Merchandise Co., Inc.	64/20664, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887)	San Diego Earphones
P74/321	Richardson, J. May 16, 1974	Macy's of California	65/13269	Items 651.75/ 650.49 and 650.45 23.9% and 22.9% (ad valorem equivalent rates)	Items 651.75/ 650.49 and 650.45 As sets at 1¢ ea. plus 17.5%; and 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/322	Richardson, J. May 16, 1974	Macy's of California	66/45023	Items 651.75/ 927.53 89.24% (ad valorem equivalent rate)	Items 651.75/ 927.53 As sets at 3¢ ea. plus 67.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

				rate)			
P74/323	Richardson, J. May 16, 1974	Macy's of California	68/62123	Items 651.75/927.60 66.49% (ad valorem equivalent rate)	Items 651.75/927.60 As sets at 3¢ ea. plus 15%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/324	Richardson, J. May 16, 1974	Macy's of California	68/62409	Items 651.75/927.61 45.32% (ad valorem equivalent rate)	Item 651.75/927.61 As sets at 3¢ ea. plus 20%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/325	Richardson, J. May 16, 1974	Macy's of California	68/68976	Items 651.75/650.49 21.85% and 22.26% (ad valorem equivalent rates)	Items 651.75/650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen tool sets
P74/326	Richardson, J. May 16, 1974	Macy's of California	69/23327	Items 651.75/650.38 32.50% and 23.03% (ad valorem equivalent rates)	Items 651.75/650.38 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

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P74/327	Richardson, J. May 16, 1974	Macy's of California	69/39308	Items 651.75/ 650.45, 650.08 and 650.38 18.5%, 21.59%, 25% and 33.55% (ad valorem equivalent rates)	Items 651.75/ 650.45 As sets at 1.8¢ ea. plus 11% (kitchen tool sets) Items 651.75/ 650.08 and 650.38 As sets at 1¢ ea. plus 12.5% (flatware sets)	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen tool and flatware sets
P74/328	Richardson, J. May 16, 1974	Macy's of California Div. of R.H. Macy & Co.	66/19119	Items 651.75/ 650.09 27.31% (ad valorem equivalent rate)	Items 651.75/ 650.09 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/329	Watson, J. May 16, 1974	Rice Bayersdorfer Co.	68/62588, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits Inc., v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")
P74/330	Watson, J.	Standard Brands Paint	67/78997	Item 207.00	Item 206.30		

P74/330	Watson, J. May 16, 1974	Standard Brands Paint, Inc.	67/78997	Item 207.00 16⅔%	Item 206.30 15%	B. A. McKenzie & Co., Inc. v. U.S. (C.D. 3020)	Los Angeles Wood doors
P74/331	Richardson, J. May 20, 1974	Macy's of California, Div. of R. H. Macy	68/6526	Items 651.75/ 650.49 24.96% and 21.5% (ad valorem equivalent rates)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/332	Richardson, J. May 20, 1974	Macy's of California, Div. of R. H. Macy	68/11270	Items 651.75/ 650.49 20.61%, 24.43% and 22.01% (ad valorem equivalent rates)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/333	Richardson, J. May 20, 1974	Macy's of California, Div. of R. H. Macy	68/68119	Items 651.75/ 927.50 21.41% (ad valorem equivalent rate)	Items 651.75/ 927.50 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/334	Richardson, J. May 20, 1974	Standard Specialty Co.	68/23698	Items 651.75/ 650.39 and 650.21 14.77% and 20.6% (ad valorem equivalent rates)	Items 651.75/ 650.39 As sets at 1¢ ea. plus 12.5% (carving sets) Items 651.75/ 650.21 As sets at 1¢ ea. plus 17.5% (bar sets)	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Carving and bar sets
P74/335	Richardson, J. May 20, 1974	United China & Glass Company	65/25919	Items 651.75/ 650.45 33.53% (ad valorem equivalent rate)	Items 651.75/ 650.45 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets
P74/336	Richardson, J. May 22, 1974	Atlantic Pacific Industries	67/16374	Items 651.75/ 927.53 153.51% (ad valorem equivalent rate)	Items 651.75/ 927.53 As sets at 3¢ ea. plus 67.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

				equivalent rate)			
P74/337	Richardson, J. May 22, 1974	China Bazaar	67/51843	Items 651.75/ 650.21 27.7% and 23.82% (ad valorem equivalent rates)	Items 651.75/ 650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Tableware and bar sets
P74/338	Richardson, J. May 22, 1974	Coast Cutlery Co.	67/84592	Items 651.75/ 927.50 25.40%, 30.68%, 22.50%, 27.31%, 26.14%, 29.89% (ad valorem equivalent rates)	Items 651.75/ 927.50 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	Portland (Oreg.) Tableware sets
P74/339	Richardson, J. May 22, 1974	D N & E Walter & Co.	66/29821	Items 651.75/ 650.49 24.56% (ad valorem equivalent rate)	Item 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Salad sets
P74/340	Richardson, J. May 22, 1974	Pacific Importing Co.	67/47757	Items 651.75/ 650.09 15.13% (ad valorem equivalent rate)	Items 651.75/ 650.09 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Carving sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/341	Richardson, J. May 22, 1974	Sprouse-Reitz Co., Inc.	67/3440	Items 651.75/ 650.47 23.56% and 24.49% (ad valorem equivalent rates)	Items 651.75/ 650.47 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco BBQ sets
P74/342	Richardson, J. May 22, 1974	Standard Specialty Co.	70/40028	Items 651.75/ 650.21 or 650.49 23% (ad valorem equivalent rate)	Items 651.75/ 650.21 or 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Snack and cheese board sets
P74/343	Richardson, J. May 22, 1974	Vandor Imports	66/19200	Items 651.75/ 927.50 31.62% (ad valorem equivalent rate)	Items 651.75/ 927.50 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/344	Richardson, J. May 22, 1974	World's Best Imports	69/48217	Items 651.75/ 650.38 28.48% (ad valorem equivalent ate)	Items 651.75/ 650.38 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. C.A.D.) 661)	San Francisco Flatware sets

P74/345	Rao, J. May 24, 1974	Acme Specialties Corp.	67/49704	Item 755.15 32% (on liquidation) Item 755.15, as amended 12¢ per lb. (on reliquidation)	Entry 1051-D reliquidated contrary to law; reliquidation improper; district director ordered to rescind reliquidation of 11/22/66 and issue a refund of any additional duties collected by virtue of said purported reliquidation	Judgment on the pleadings	Longview (Portland, Oreg.) Fireworks
P74/346	Rao, J. May 24, 1974	The Akron et al.	70/63119, etc.	Item 203.30 13.9¢ per lb. plus 11%	Item 206.97 11.5%	Agreed statement of facts	Los Angeles Salad bowls
P74/347	Rao, J. May 24, 1974	Far Eastern Markets, Inc.	66/8558	Par. 353 15%	Par. 353 12½%	Judgment on the pleadings Midland International Corporation v. U.S. (C.D. 3217) North American Foreign Trading Corp. v. U.S. (C.D. 3968)	New York Earphones

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/348	Watson, J. May 24, 1974	The American Import Co.	69/9134, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.
P74/349	Watson, J. May 24, 1974	Pacific Coast Commercial Inc., dba Pacific Coast Ribbon Mills	67/18487, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P74/350	Newman, J. May 24, 1974	Air Sea Forwarders, Inc., a/c Chatham Brass Co., et al.	67/24857, etc.	Item 657.35 1.275¢ per lb. plus 15%; 1¢ per lb. plus 13.5%; or 1¢ per lb. plus 12% (items marked "B")	Item 654.00 10%, 9% or 8% (items marked "B") Item 654.00 10% (items marked "D")	The Westbrass Company v. U.S. (C.D. 4283) (items marked "B") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459); Davies, Turner & Company v. U.S. (Abs. 69651); The Westbrass Company v.	Los Angeles Shower heads or shower drains used as shower fixtures or parts of showers (items marked "B") Sink strainers with insert baskets, flat sink strain-

				Item 657.35 1.275¢ per lb. plus 15% (items marked "D")		U.S. (C.D. 4293) (items marked "D")	ers, and replacement insert baskets for strainers (all of brass) (items marked "D")
P74/351	Newman, J. May 24, 1974	A. E. Lyon Company et al.	67/39020, etc.	Item 657.35 1.275¢ per lb. plus 15%; 1¢ per lb. plus 13.5%; or 1¢ per lb. plus 12% (items marked "B") Item 657.20 19%, 17% or 15% (items marked "C") Item 657.35 1.275¢ per lb. plus 15% (items marked "D")	Item 654.00 10%, 9% or 8% (items marked "B") Item 653.95 17%, 15% or 13.5% (items marked "C") Item 654.00 10% (items marked "D")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "B") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459); Davies, Turner & Company v. U.S. (Abs. 69651); The Westbrass Company v. U.S. (C.D. 4293) (items marked "C" and "D")	Los Angeles Shower heads or shower drains, used as shower fixtures or parts of showers (items marked "B") Sink strainers with insert baskets, flat sink strainers, and replacement insert baskets for strainers, all of iron or steel (items marked "C") Sink strainers with insert baskets, flat sink strainers, and replacement insert baskets for strainers (all of brass) (items marked "D")
P74/352	Ford, J. May 29, 1974	Laconia Needle Mfg. Co.	67/47326, etc.	Item 657.20 19%	Item 609.88 8.5%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P74/353	Ford, J. May 29, 1974	Laconia Needle Mfg. Co.	69/22642	Item 670.58 80¢ per 1000 plus 24%	Item 609.88 8%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/354	Ford, J. May 29, 1974	Laconia Needle Mfg. Co.	70/64008	Item 670.58 80¢ per 1000 plus 24%	Item 609.88 8%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P74/355	Ford, J. May 29, 1974	Laconia Needle Mfg. Co.	70/64020, etc.	Item 670.58 70¢ per 1000 plus 21%	Item 609.88 7.5%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P74/356	Richardson, J. May 29, 1974	Bombardier, Ltd., et al.	72-5-01180, etc.	Item 692.35 or 692.16 6.5% or 5.5%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Champlain (Ogdensburg) Tractors and parts of tractors
P74/357	Landis, J. May 29, 1974	Beck-Arnley Corp.	73-8-02221	Item 653.39 19%	Item 683.65 4%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/358	Landis, J. May 29, 1974	Joseph Lucas North America, Inc.	73-7-01971	Item 653.39 19%	Item 683.65 4%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/359	Watson, J. May 29, 1974	G. R. Bolton, Inc.	72-2-00302	Item 748.20 26.5%, 23.5% or 22%	Item 774.60 15%, 11.5% or 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Artificial flowers, etc.
P74/360	Watson, J. May 29, 1974	W. J. Byrnes Co. et al.	67/5837, etc.	Item 748.20 28%, 26.5%, 25% and 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); Joseph Markovits,	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")

				23.5%	11.5%	3279); Joseph Markovits,	and "F")
						Inc. v. U.S. (C.D. 4396); First American Artificial Flowers, Inc. v. U.S. (C.D. 4165)	
P74/361	Watson, J. May 29, 1974	Marcus Display Industries, Inc.	71-10-01522	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Boston Artificial flowers, etc.
P74/362	Newman J. May 29, 1974	James G. Wiley Co., a/c Lion Sales & Mfg. Co., et al.	67/7309, etc.	Item 657.35 1.275¢ per lb. plus 15% (items marked "B", "D" and "F")	Item 654.00 10% (items marked "B" and "D") Not entireties as assessed; require finding of separate values; appraisement and liquidation void; protests dismissed; entry papers returned to district director for further administrative action (items marked "F")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "B") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459); Davies, Turner & Company v. U.S. (Abs. 69651); The Westbrass Company v. U.S. (C.D. 4293) (items marked "D") Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459); The Westbrass Company v. U.S. (C.D. 4293) (items marked "F")	Los Angeles Shower heads or shower drains, used as shower fixtures or parts of showers (items marked "B") Sink strainers with insert baskets, flat sink strainers, and replacement insert baskets for strainers, all of brass (items marked "D") Strainer stoppers and their bases (items marked "F")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/363	Boe, C. J. June 5, 1974	Tree Products Company	72-4-00742	Item 727.40 13.5%	Item 202.54 6%	Agreed statement of facts	Longview (Portland, Oreg.) Kiln dried Philippine (lauan) mahogany (edge-glued hardwood)
P74/364	Ford, J. June 5, 1974	Imperial International Corp. et al.	66/21835, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/365	Ford, J. June 5, 1974	Laconia Needle Mfg. Co.	67/69706, etc.	Item 670.58 $1 per 1000 plus 30%	Item 609.88 8.5%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stamping
P74/366	Richardson, J. June 5, 1974	General Instrument Corporation	70/43056	Item 687.60 12.5% without allowance under item 807.00	Items 687.60/ 807.00 12.5% upon full value of imported merchandise (transistors) less cost or value of U.S. components (ceramic lead (bead), club-head lead, nailhead lead)	General Instrument Corporation v. U.S. (C.A.D. 1062)	New York American goods returned (components of transistors)
P74/367	Landis, J.	National Silver Co.	68/89104	Item 533.75	Item 533.71	National Silver Co. v. U.S.	San Francisco

P74/367	Landis, J. June 5, 1974	National Silver Co.	68/69104	Item 533.75 10¢ per doz. pcs. plus 60%	Item 533.71 45%	National Silver Co. v. U.S. (C.D. 3964)	San Francisco Mugs
P74/368	Watson, J. June 5, 1974	Kwan Yuen Co.	67/5848, etc.	Item 748.20 28%, 26.5%, 25% and 23.5%	Item 774.60 17%, 15%, 13.5% and 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc. v. U.S. (C.D. 4396) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")
P74/369	Re, J. June 5, 1974	C. Tennant, Sons & Co. et al.	72-1-00154, etc.	Item 772.15 10%	Item 772.35 7%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/370	Boe, C. J. June 7, 1974	Baruch Petranker Import Co., Inc.	68/62444	Item 651.75 121.5% (ad valorem equivalent rate)	Item 651.75/650.17 At appropriate specific or compound rate (3.5¢ ea. + 15.5%); the specific rate or specific portion of compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set.	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Camping sets

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/371	Boe, C. J. June 7, 1974	General Instrument Corporation	71-10-01335	Item 687.60 11% without allowance under item 807.00	Item 687.60/807.00 11% upon full value of imported merchandise (G-20 semiconductors) less cost or value of U.S. components (solder wafer, sleeve, anode lead, TE-5 cell) (entry 536028, protest 1001-1-004858) Protest 1001-1-004849 (entry 536711) dismissed	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of G-20 semiconductors)
P74/372	Boe, C. J. June 7, 1974	General Instrument Corporation	71-10-01336	Item 687.60 11% without allowance	Items 687.60/807.00 11% upon full	Judgment on the pleadings General Instrument Corporation v. U.S.	New York American goods returned (components of UHF

P74/372	Boe, C. J. June 7, 1974	General Instrument Corporation	71-10-01336	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (UHF diodes) less cost or value of U.S. components (silicon wafer, beaded leads, and sleeve assembly in entries 533599 and 545877; beaded leads and dice in entry 552249)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1002, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of UHF diodes)
P74/373	Boe, C.J. June 7, 1974	General Instrument Corporation	71-10-01338	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (TE-2 semiconductors) less cost or value of U.S. component (solder wafer)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1002, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of TE-2 semiconductors)

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/374	Boe, C.J. June 7, 1974	General Instrument Corporation	71-10-01342	Item 687.60 11% or 10% without allowance under item 807.00	Items 687.60/807.00 11% or 10% upon full value of imported merchandise (TF-4 semiconductors) less cost or value of U.S. components (solder wafer in entry 573700 and special cell in every entry)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of TF-4 semiconductors)
P74/375	Ford, J. June 7, 1974	Laconia Needle Mfg. Co.	68/42786, etc.	Item 670.58 90¢ per 1000 plus 27%	Item 609.88 8%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P74/376	Richardson, J. June 7, 1974	Chadwick-Miller Importers, Inc.	70/46989	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994)	Boston

P74/375	Ford, J. June 7, 1974	Laconia Needle Mfg. Co.	68/42786, etc.	Item 670.58 90¢ per 1000 plus 27%	Item 609.88 8%	Pistorino & Company, Inc. v. U.S. (C.D. 4378)	Metal stampings
P74/376	Richardson, J. June 7, 1974	Chadwick-Miller Importers, Inc.	70/46989	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Boston Bird cages with flowers and lights
P74/377	Richardson, J. June 7, 1974	F. W. Myers & Co., Inc.	72-3-00656, etc.	Item 692.35 10% or 8%	Item 692.30 Free of duty	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 1097)	Port Huron (Detroit) Tractors and parts
P74/378	Watson, J. June 7, 1974	Butler Bros. et al.	69/22068, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/379	Watson, J. June 7, 1974	Regency Flowers, Inc.	71-10-01579	Item 748.20 22%	Item 774.60 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns, in c.v. of plastic
P74/380	Watson, J. June 7, 1974	Reliance Trading Corp. of America	71-8-00660	Item 748.20 25% or 23.5%	Item 774.60 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. C.D. 4185 Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/381	Boe, C. J. June 10, 1974	Border Brokerage Co., Inc.	70/64504	Item 649.43 24% (cutting tools) Item 674.50 12% (tool holders)	Item 649.17 6%	Judgment on the pleadings Border Brokerage Company, Inc. v. U.S. (C.D. 4062)	Blaine (Seattle) Tungsten carbon holders and dado saws

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/382	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01273	Item 687.60 12.5% or 11% without allowance under item 807.00	Items 687.60/807.00 12.5% or 11% upon full value of imported merchandise (DO-7 diodes) less cost or value of U.S. components (solder wafer in every entry; anode lead in entry 623682; planar chip, sleeve subassembly, solder base in entry 623682)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of G-40 diodes)
P74/383	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01341	Item 687.60 11% or 10% without allowance under item 807.00	Items 687.60/807.00 11% or 10% upon full value of imported merchandise (G-40 diodes) less cost or value of U.S.	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of G-40 diodes)

					components (solder wafer in every entry; sleeve, anode lead, and TE-5 cell in every entry except 4)		
P74/384	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01343	Item 687.60 10% without allowance under item 807.00	Items 687.60/807.00 10% upon full value of imported merchandise (semiconductors) less cost or value of U.S. components (special cell, base, contact spring, hat, lead, solder wafer)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062; 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of semiconductors)
P74/385	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01344	Item 687.60 10% without allowance under item 807.00	Item 687.60/807.00 10% upon full value of imported merchandise (semiconductors TP-2) less cost or value of U.S. components (lead wire, dice, glass bead)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of semiconductors TP-2)

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/386	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01346	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (semiconductors TY-2) less cost or value of U.S. components (sleeve subassembly, anode lead assembly, solder, wafer, channel stopper)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of semiconductors TY-2)
P74/387	Boe, C, J. June 10, 1974	General Instrument Corporation	71-10-01348	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (transistors) less cost or value of U.S. components (tin anode and dice)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of transistors)

components (tin anode and dice)

P74/388	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01400	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (semiconductors TH-4) less cost or value of U.S. components (special cell, base, contact spring, hat, lead wire, solder wafer)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of semiconductors TH-4)
P74/389	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01401	Item 687.60 11% without allowance under item 807.00	Items 687.60/807.00 11% upon full value of imported merchandise (transistors 2N 598) less cost or value of U.S. components (JAN 2N 598 alloyed assembly and headed ground collector)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of transistors 2N 598)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/390	Boe, C. J. June 10, 1974	General Instrument Corporation	71-10-01484	Item 687.60 12.5% without allowance under item 807.00	Items 687.60/807.00 12.5% upon full value of imported merchandise (semiconductors Z-9951) less cost or value of U.S. component (sleeving)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1002, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of semiconductors Z-9951)
P74/391	Boe, C. J. June 11, 1974	A. A. Importing Co.	70/35379	Item 748.20 26.5%	Item 774.60 15%	Judgment on the pleadings Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers
P74/392	Boe, C. J. June 11, 1974	Adolco Trading Corp.	70/65713-8	Item 706.60 20%	Item 774.60 13.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags (severed entry 235923)
P74/393	Boe, C. J. June 11, 1974	Adolco Trading Corp. et al.	73-1-00018, etc.	Item 706.60 20%	Item 774.60 10% or 8.5%	Adolco Trading Corp. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/394	Boe, C. J. June 11, 1974	Steve Goldberg & Co., Inc.	70/40718	Item 748.20 23.5%	Item 774.60 11.5%	Judgment on the pleadings Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation v. U.S. (C.D. 3279)	Los Angeles Artificial flowers
P74/395	Boe C. J. June 11 1974	Holiday Fair, Inc.	70/61963	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags.

						V. U.S. (C.D. 3278) Zunold Trading Corporation v. U.S. (C.D. 3279)	
P74/395	Boe C. J. June 11 1974	Holiday Fair, Inc.	70/61963	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags.
P74/396	Boe C. J. June 12, 1974	General Instrument Corporation	71-8-00704	Item 687.60 12.5% without allowance under item 807.00	Items 687.60/807.00 12.5% upon full value of imported merchandise (semiconductors) less cost or value of U.S. components (case sleeving and terminal in entry 608498; case and sleeving in entry 521003)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of semiconductors)
P74/397	Boe C. J. June 12, 1974	General Instrument Corporation	71-8-00711	Item 687.60 12.5% 11% or 10% without allowance under item 807.00	Items 687.60/807.00 12.5%, 11% or 10% upon full value of imported merchandise (transistors) less cost or value of U.S. components (wire, gold wire, gold solder preform)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of transistors)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/398	Boe, C. J. June 12, 1974	General Instrument Corporation	71-8-00872	Item 685.80 12% without allowance under item 807.00	Items 685.80/807.00 12% upon full value of imported merchandise (capacitors) less cost or value of U.S. components (mylar section and tape)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of capacitors)
P74/399	Boe, C. J. June 12, 1974	General Instrument Corporation	71-4-01032	Item 685.80 12% without allowance under item 807.00	Items 685.80/807.00 12% upon full value of imported merchandise (dipped mica capacitors) less cost or value of U.S. components (silver mica, baking mica, tinfoil and tape)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of dipped mica capacitors)
P74/400	Richardson, J.	Stanley Roberts, Inc.	65/12836	Items 651.75/	Items 651.75/	Decision and judgment	New York

					tinfoil and tape)		
P74/400	Richardson, J. June 12, 1974	Stanley Roberts, Inc.	65/12836	Items 651.75/ 927.53 86.50% (ad valorem equivalent rate)	Items 651.75/ 650.21, 650.49 or 650.57 As sets at 1¢ ea. plus 17.5%	Decision and judgment U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	New York Sets of knives, forks or spoons
P74/401	Richardson, J. June 12, 1974	Stanley Roberts, Inc.	66/3184	Items 651.75/ 927.53 90.52% (ad valorem equivalent rate)	Items 651.75/ 650.21, 650.49 or 650.57 As sets at 1¢ ea. plus 17.5%	Decision and judgment U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	New York Sets of knives, forks or spoons
P74/402	Richardson, J. June 12, 1974	Stanley Roberts, Inc.	66/57447	Items 651.75/ 927.53 86.5% (ad valorem equivalent rate)	Items 651.75/ 650.21, 650.49 or 650.57 As sets at 1¢ ea. plus 17.5%	Decision and judgment U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Sets of knives, forks or spoons
P74/403	Richardson, J. June 12, 1974	Stanley Roberts, Inc.	67/39060	Items 651.75/ 927.53 87.77% (ad valorem equivalent rate)	Items 651.75/ 650.21, 650.49 or 650.57 As sets at 1¢ ea. plus 17.5%	Decision and judgment U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Sets of knives, forks or spoons
P74/404	Watson, J. June 12, 1974	Dexter Thread Mills, Inc.	70/24243, etc.	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/405	Watson, J. June 12, 1974	Moskatel's, Inc.	67/64927, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc v. U.S. (C.D. 4396) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B"
P74/406	Maletz, J. June 12, 1974	Louis Greenberg & Son, Inc.	72-6-01355	Item 683.70 35%	Item 737.90 21%	Amico, Inc. v. U.S. (C.D. 4494)	New York Toy flashlights
P74/407	Re, J. June 12, 1974	Venetianaire Corp. of America	66/15535, etc.	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers and pillow covers and protectors
P74/408	Boe, C. J. June 13, 1974	General Instrument Corporation.	71-6-00707	Item 685.80 12.5% or 11% without allowance under item 807.00	Items 685.80/ 807.00 12.5% or 11% upon full value of imported merchandise (mica capacitors) less cost or value of U.S. components (silvered mica, backing mica,	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of mica capacitors)

					nents (silvered mica, backing mica, tinfoil, tape)		
P74/409	Boe, C. J. June 13, 1974	General Instrument Corporation	71-8-00712	Item 687.60 12.5% without allowance under item 807.00	Items 687.60/807.00 12.5% upon full value of imported merchandise (diodes) less cost or value of U.S. components (beaded lead whisker assemblies, soldered case assemblies, ferrules, sleeve assemblies, epitaxial dice (disk) or cell, wire leads)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of diodes)
P74/410	Boe, C. J. June 13, 1974	General Instrument Corporation	71-9-01189	Item 687.60 11% without allowance under item 807.00	Item 687.60/807.00 11% upon full value of imported merchandise (transistors) less cost or value of U.S. components (gold preform and gold wire)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of transistors)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/411	Ford, J. June 13, 1974	Laconia Needle Mfg. Co.	65/2478, etc.	Item 670.58 $1 per 1000 plus 30%	Item 609.88 8.5%	Pistorino & Company Inc, v. U.S. (C.D. 4373)	Boston Metal stampings
P74/412	Richardson, J. June 13, 1974	Allen-Lewis Mfg.	70/64712, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 At appropriate specific or compound rate; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set; as set forth in schedule in column headed "Claimed Rate"	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/413	Landis, J. June 13, 1974	Beck Arnley Corp. et al.	72-6-01309, etc.	Item 653.30 19%	Item 683.65 8.5%, 6.5%, 5.5% or 5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/414	Watson, J. June 13, 1974	S. Berger Import & Mfg. Corp.	66/77815-S, etc.	Item 748.20 26.5%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves, etc.
P74/415	Boe, C. J. June 14, 1974	General Instrument Corporation	71-9-01122	Item 685.80 12.5%, 12% or 11% without allowance	Items 685.80/ 807.00 12.5%, 12% or 11% upon full	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s	New York American goods returned (components of capaci-

P74/414	Watson, J. June 13, 1974	S. Berger Import & Mfg. Corp.	66/77815–S, etc.	Item 748.20 26.5%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves, etc.
P74/415	Boe, C. J. June 14, 1974	General Instrument Corporation	71–9–01122	Item 685.80 12.5%, 12% or 11% without allowance under item 807.00	Items 685.80/807.00 12.5%, 12% or 11% upon full value of imported merchandise (capacitors) less cost or value of U.S. components (paper, anode and cathode foil, foil, tab foil, tape, cathode tab)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422)	New York American goods returned (components of capacitors)
P74/416	Boe, C. J. June 14, 1974	Hub Floral Corporation	69/27779, etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Judgment on the pleadings	Boston Artificial flowers, etc.
P74/417	Watson, J. June 14, 1974	Bruce Duncan Co. Patio Creations	70/24916, etc.	Item 748.20 26.5%, 25% and 23.5%	Item 774.60 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")
P74/418	Watson, J. June 14, 1974	Sol Spitz Co., Inc.	69/4523, etc.	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/419	Boe, C. J. June 18, 1974	General Instrument Corporation	71-10-01340	Item 687.60 12.5%, 11% or 10% without allowance under item 807.00	Items 687.60/807.00 12.5%, 11% or 10% upon full value of imported merchandise (G-100 diodes) less cost or value of U.S. components (whiskers and solder preform in all entries; tin anode in entry 604954; solder wafer in entries 604954, 152398; cells in every entry except 6; and sleeve assembly in every entry except entry 501087)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of G-100 diodes)
P74/420	Boe, C. J.	General Instrument Cor-	71-10-01345	Item 687.60	Items 687.60/	Judgment on the pleadings	New York

					except entry 501087)		
P74/420	Boe, C. J. June 18, 1974	General Instrument Corporation	71-10-01345	Item 687.00 12.5% or 11% without allowance under item 807.00	Items 687.60/ 807.00 12.5% or 11% upon full value of imported merchandise (transistors NPN and PNP) less cost or value of U.S. components (gold preform and gold wire)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of transistors NPN and PNP)
P74/421	Ford, J. June 18, 1974	Laconia Needle Mfg. Co.	69/22647, etc.	Item 670.58 80¢ per 1000 plus 24%	Item 609.88 8%	Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Metal stampings
P74/422	Richardson, J. June 18, 1974	New York Merchandise Co., Inc.	65/6174	Item 927.53 3¢ ea. plus 67.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1008)	San Diego Dessert knives
P74/423	Richardson, J. June 18, 1974	New York Merchandise Co., Inc.	66/3388	Item 927.53 3¢ ea. plus 67.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1008)	San Diego Dessert knives
P74/424	Richardson, J. June 18, 1974	New York Merchandise Co., Inc.	66/3399	Item 927.53 3¢ ea. plus 67.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1008)	San Diego Steak knives
P74/425	Richardson, J. June 18, 1974	New York Merchandise Co., Inc.	66/3406	Item 927.53 3¢ ea. plus 67.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1008)	San Diego Dessert knives
P74/426	Richardson, J. June 18, 1974	New York Merchandise Co., Inc.	66/3417	Item 927.53 3¢ ea. plus 67.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1008)	San Diego Dessert knives

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/427	Richardson, J. June 18, 1974	United Silver and Cutlery Co.	67/3185	Item 650.15 2¢ ea. plus 12.5%	Item 650.21 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles 2 pcs. carving set with inlaid plastic handle No. 376
P74/428	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/8093	Items 650.15 and 650.45 2¢ ea. plus 12.5%	Item 650.21 1¢ ea. plus 17.5% (butter knives) Item 650.49 1¢ ea. plus 17.5% (dessert and salad forks)	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Butter knives, dessert forks, salad forks
P74/429	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/8117	Item 927.53 3¢ ea. plus 67.5% (knives) Item 650.45 2¢ ea. plus 12.5% (forks)	Item 650.21 1¢ ea. plus 17.5% (knives) Item 650.49 1¢ ea. plus 17.5% (forks)	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Knives and forks
P74/430	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/24841	Items 650.15 and 650.45 2¢ ea. plus 12.5%	Item 650.21 1¢ ea. plus 17.5% (knives) Item 650.49 1¢ ea. plus 17.5% (for s)	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Knives and forks
P74/431	Richardson, J.	Western Pacific Import	67/24860	Items 650.15 and	Item 650.21	Judgment on the pleadings	Los Angeles

P74/431	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/24860	Items 650.15 and 650.45 2¢ ea. plus 12.5%	Item 650.21 1¢ ea. plus 17.5% (knives) Item 650.49 1¢ ea. plus 17.5% (forks)	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Knives and forks
P74/432	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/31628	Item 650.45 2¢ ea. plus 12.5%	Item 650.49 1¢ ea. plus 17.5%	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Forks
P74/433	Richardson, J. June 18, 1974	Western Pacific Import Co.	67/52676	Items 650.15 and 650.45 2¢ ea. plus 12.5%	Item 650.21 1¢ ea. plus 17.5% (knives) Item 650.49 1¢ ea. plus 17.5% (forks)	Judgment on the pleadings U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068)	Los Angeles Knives and forks
P74/434	Richardson, J. June 18, 1974	James G. Wiley Co., a/c E. J. & R Gindl	67/13163	Item 651.75 66.3%, 24.06%, 24.55% or 73% (ad valorem equivalent rates)	Item 651.75 1¢ ea. plus 17.5%; 2¢ ea. plus 12.5%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles 3 Roses Pattern, Wheat Pattern, 3 pc. and 5 pc. Barbecue Sets, Pattern Nos. 170 and 171
P74/435	Watson, J. June 18, 1974	Creative Art Flowers	71-5-00093	Item 748.20 23.5%	Item 774.60 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P74/436	Watson, J. June 18, 1974	Creative Art Flowers, Inc.	71-11-01807	Item 748.20 22% or 23.5%	Item 774.60 10% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, in c.v. of plastic, produced in one piece

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/437	Watson, J. June 18, 1974	Crown Florist Supply et al.	67/76082(A), etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc. v. U.S. (C.D. 4396) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")
P74/438	Watson, J. June 18, 1974	Ribbon Narrow World Wide, Inc.	72-9-02026	Item 748.20 26.5%	Item 774.60 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves
P74/439	Newman, J. June 18, 1974	S. Hiller & Co.	66/80535	Item 653.40 19% (as entireties)	Protest premature; appraisement and liquidation not according to law; protest dismissed; regional commissioner ordered to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York Fluorescent lamps with bulbs (not entireties)
P74/440	Re, J. June 18, 1974	A & P Import Co.	72/8	Item 772.15 15%	Item 772.35 11%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers
P74/441	Ford, J.	W. T. Grant Co. et al.	67/14670	Item 684.70	Item 685.20	General Plastic Company	New York

	June 18, 1974			15%	11%	ica v. U.S. (C.A.D. 1054)	Plastic mattress covers
P74/441	Ford, J. June 19, 1974	W. T. Grant Co. et al.	67/15670, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	New York Earphones
P74/442	Ford, J. June 19, 1974	J. C. Penney Purchasing Corp. et al.	69/30575, etc.	Item 684.70 13%	Item 685.25 11%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	San Francisco Earphones (items marked "A" and "B")
P74/443	Ford, J. June 19, 1974	Sony Corp. of America	71-6-00367	Item 684.70 15% or 13%	Item 685.25 11% or 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	New York Earphones
P74/444	Ford, J. June 19, 1974	Universal Transcontinental Corp.	66/34086, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	New York Earphones
P74/445	Landis, J. June 19, 1974	Columbia Motor Corp. et al.	69/15462, etc.	Item 653.40 or 653.39 19%	Item 683.65 8.5%, 7.5% or 6.5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Lights
P74/446	Landis, J. June 19, 1974	New York Merchandise Co., Inc.	67/43037	Item 546.51 50%	Plaintiff entitled to refund of excess customs duties in sum of $119.56 occasioned by reliquidation (under item 546.35 at 25.5%) of entry 219310 on 10/25/66; district director ordered to complete reliquidation of entry	Agreed statement of facts	Los Angeles Bubble glass brandy snifters

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/447	Watson, J. June 19, 1974	Swank, Inc.	73-11-03004	Duty assessed on entire quantity of merchandise on entry, although 4 cartons of cigarette lighters were reported manifested but not found	District director ordered to reliquidate entry making allowance for duty assessed on cartons No. 159, 162, 163, 171	Agreed statement of facts	Boston Shortage, cigarette lighters
P74/448	Re, J. June 19, 1974	Franshaw, Inc.	69/45280	Item 772.15 15%	Item 772.35 11%	Venetianaire Corp of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers
P74/449	Re, J. June 19, 1974	Rice Bayersdorfer Co.	67/74864, etc.	Item 737.20 35% (items marked "A" and "B")	Item 772.95 25.5% (items marked "A") Item 772.97 17% (items "B")	Agreed statement of facts (items marked "A" and "B")	Philadelphia Christmas tree ornaments of plastics (items marked "A") Christmas ornaments of plastics, not Christmas tree ornaments (items marked "B")
P74/450	Re, J.	United Silver & Cutlery	67/76183	Item 772.06	Item 772.15	Dayar Products, Inc. v.	Los Angeles

							marked "B")
P74/450	Re, J. June 19, 1974	United Silver & Cutlery Co.	67/76153	Item 772.06 17% plus $0.21	Item 772.15 17%	Davar Products, Inc. v. U.S. (C.D. 3880)	Los Angeles Plastic covered candy bowls
P74/451	Landis, J. June 21, 1974	Chieftain Uniworld Corp.	71-8-00680, etc.	Item 653.39 19%	Item 653.65 6.5%, 5.5% or 5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights
P74/452	Watson, J. June 21, 1974	George S. Bush & Co., Inc.	67/18193	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco Incorporated et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyer chain chiefly used for transmission of power
P74/453	Watson, J. June 21, 1974	George S. Bush & Co., Inc.	67/18194	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco Incorporated et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyor chain chiefly used for the transmission of power
P74/454	Watson, J. June 21, 1974	George S. Bush & Co., Inc.	67/18195	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco Incorporated et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyor chain chiefly used for transmission of power
P74/455	Watson, J. June 21, 1974	George S. Bush & Co., Inc.	67/18196	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco Incorporated et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyor chain chiefly used for transmission of power

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/456	Boe, C.J. June 24, 1974	General Instrument Corporation	72-1-00123	Item 685.20 8% without allowance under item 807.00	Items 685.20/807.00 8% upon full value of imported merchandise (color delay lines) less cost or value of U.S. components (tape and foil)	Judgment on the pleadings General Instrument Corporation v. U.S. (C.A.D.'s 1062, 1106; C.D.'s 4408, 4422, 4470)	New York American goods returned (components of color delay lines)
P74/457	Boe, C.J. June 24, 1974	National Silver Co.	67/81002	Item 533.75 10¢ per doz. pcs. plus 60%	Item 533.71 45%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	Honolulu Mugs
P74/458	Boe, C.J. June 24, 1974	National Silver Co.	68/14024	Item 533.75 10¢ per doz. pcs. plus 60%	Item 533.71 45%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	Honolulu Mugs
P74/459	Ford, J. June 24, 1974	General Electric Company	66/2271	Item 685.90 17.5%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	Rochester Jacks
P74/460	Watson, J. June 24, 1974	Aldik Artificial Flowers Co., Inc.	72-8-01763, etc.	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Los Angeles Plastic artificial flowers, etc.

P74/461	Maletz, J. June 24, 1974	New York Merchandise Co., Inc.	69/26302	Item 737.90 31%	Item 734.50 14%	Agreed statement of facts	Portland, Oreg. Badminton rackets and a shuttlecock for use in a game of badminton
P74/462	Maletz, J. June 24, 1974	W. R. Zanes & Co. of La., Inc. A. W. Scheffres Corp., Walter Fabrics Div.	68/67257 68/68312	Item 357.05 26%	Item 323.11 12.06%	Summary judgment	New Orleans Grey cotton cloth
P74/463	Re, J. June 24, 1974	American Customs Brokerage et al.	65/24942, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed Assessed Ad Valorem Equivalent Rate	Item 651.75 At appropriate specific or compound rate (set forth in schedule in column "Claimed Rate"); the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	Honolulu Flatware sets
P74/464	Ford, J. June 26, 1974	Laconia Neddle Mfg. Co.	66/7945, etc.	Item 670.58 $1 per 1000 plus 30%	Item 609.88 8.5%	Pistorino & Company, Inc. v. U. S. (C.D. 4373)	Boston Metal stampings
P74/465	Watson, J. June 26, 1974	Robert Bosch Corp.	65/9537, etc.	Item 685.90 17.5%, 15.5% or 14%	Item 683.60 8.5%, 7.5% or 6.5%	Robert Bosch Corp. et al. v. U.S. (C.D. 3881)	San Francisco Solenoid switches

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/466	Watson, J. June 26, 1974	City Products Corp.	71-10-01528	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles and Seattle Artificial flowers, etc.
P74/467	Watson J. June 26, 1974	Halperin Shipping Co., Inc., et al.	70/27725, etc.	Item 748.20 28% or 25%	Item 774.60 17% or 13.5%	Armbee Corporation et al. v. U. S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New York Artificial flowers, etc.
P74/468	Watson, J. June 26, 1974	New York Merchandise Co., Inc.	68/44188, etc.	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U. S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279)	San Diego Artificial flowers, etc.
P74/469	Watson June 26, 1974	Norman Import & Export Co., Inc.	67/6145, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.

P74/470	Watson, J. June 26, 1974	Ribbon Narrow World Wide, Inc.	68/67514, etc.	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New York Artificial flowers, etc.
P74/471	Watson, J. June 26, 1974	Union Novelty Co., Inc.	66/26900, etc.	Item 748.20 26.5%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit leaves, etc.
P74/472	Re, J. June 26, 1974	Fedtro, Inc.	69/18039	Item 683.30 12%	Item 678.50 9%	Judgment on the pleadings J. Gerber & Co., Inc. v. U.S. (C.D. 4101)	New York Automobile vacuum cleaners
P74/473	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	65/20544	Items 651.75/650.39 67.23%, 80% or 71.55% (ad valorem equivalent rates)	Items 651.75/650.39 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets
P74/474	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	66/19127	Items 651.75/650.45 39.43% (ad valorem equivalent rate)	Items 651.75/650.45 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen tool sets
P74/475	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	66/30861	Items 651.75/650.49 66.34% (ad valorem equivalent rate)	Items 651.75/650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/476	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	66/45181	Items 651.75/ 650.45 or 650.49 38.16% or 25.54% (ad valorem equivalent rates)	Items 651.75/ 650.45 or 650.49 As sets at 2¢ ea. plus 12.5%; 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen and BBQ sets
P74/477	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	67/332	Items 651.75/ 650.45 33.51% (ad valorem equivalent rate)	Items 651.75/ 650.45 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. C.A.D. 961)	San Francisco Kitchen tool sets
P78/478	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	67/16660	Items 651.75/ 650.45 25.83% or 30.68% (ad valorem equivalent rates)	Items 651.75/ 650.45 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen tool sets
P74/479	Richardson, J. June 27, 1974	Baruch Petranker Import Co.	60/23237	Items 651.75/ 650.45 45.57% (ad valorem equivalent rate)	Items 651.75/ 650.45 As sets at 1.8¢ ea. plus 11%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco BBQ sets
P74/480	Richardson, J. June 27, 1974	Otagiri Mercantile Co., Inc.	67/64450	Items 651.75/ 650.49 26% (ad valorem equivalent rate)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P74/481	Richardson, J.	Fred Roberts Co.	65/4261	Items 651.75/	Items 651.75/	Decision and judgment	

P74/481	Richardson, J. June 27, 1974	Fred Roberts Co.	65/4261	Items 651.75/ 650.49 or 650.21 24.76% (ad valorem equivalent rate)	Items 651.75/ 650.49 or 650.21 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/482	Richardson, J. June 27, 1974	Fred Roberts Co.	67/79188	Items 651.75/ 650.49 25.23% (ad valorem equivalent rate)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/483	Richardson, J. June 27, 1974	Fred Roberts Co.	68/62099	Items 651.75/ 650.49 or 650.39 15.28% (ad valorem equivalent rate)	Items 651.75/ 650.49 or 650.39 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Carving sets
P74/484	Richardson, J. June 27, 1974	Stanley Roberts, Inc.	69/39227	Items 651.75/ 650.15 29.17% (ad valorem equivalent rate)	Items 651.75/ 650.15 As sets at 2¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Stainless steel flatware sets
P74/485	Richardson, J. June 27, 1974	Thornley & Pitt	66/18974	Items 651.75/ 650.21 or 650.49 28.17% (ad valorem equivalent rate)	Items 651.75/ 650.21 or 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Cheese board sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/486	Richardson, J. June 27, 1974	Walter Imports, Div. of D N & E Walter	68/30259	Items 651.75/ 650.49 24.21% (ad valorem equivalent rate)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Salad sets
P74/487	Richardson, J. June 28, 1974	Baruch Petranker Import Co.	70/7733	Items 651.75/ 650.45 or 650.49 31.12% or 33.11% (ad valorem equivalent rates)	Items 651.75/ 650.45 or 650.49 As sets at 1.6¢ ea. plus 10%; 0.8¢ ea. plus 14%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Kitchen tool and flatware sets
P74/488	Richardson, J. June 28, 1974	Otagiri Mercantile Co.	68/2509	Items 651.75/ 650.49 25.83% (ad valorem equivalent rate)	Items 651.75/ 650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets

P74/489	Richardson, J. June 28, 1974	Otagiri Mercantile Co.	70/64729	Items 651.75/650.49 21.9% (ad valorem equivalent rate)	Items 651.75/650.49 As sets at 0.9¢ ea. plus 15.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar sets
P74/490	Richardson, J. June 28, 1974	Fred Roberts Co.	67/23588	Items 651.75/650.49 25.833% (ad valorem equivalent rate)	Items 651.75/650.49 As sets at 1¢ ea. plus 17.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Bar tool sets
P74/491	Richardson, J. June 28, 1974	Stanley Roberts, Inc.	69/35819	Items 651.75/650.08 28% (ad valorem equivalent rate)	Items 651.75/650.08 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Stainless steel flatware sets
P74/492	Richardson, J. June 28, 1974	Seaway Importing Co.	70/53738	Items 651.75/650.39 34.8% (ad valorem equivalent rate)	Items 651.75/650.39 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Camping sets
P74/493	Richardson, J. June 28, 1974	Vernon Co.	68/62195	Items 651.75/651.47 19.17% (ad valorem equivalent rate)	Items 651.75/651.47 As sets at 1¢ ea. plus 12.5%	Decision and judgment Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Cutlery sets

ABSTRACTS OF CUSTOMS COURT DECISIONS

Reappraisements

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/1	Maletz, J. January 4, 1974	Consolidated Merchandising Corp. et al.	R69/673, etc.	Constructed value	As set forth in schedule, attached to decision and judgment	Agreed statement of facts	San Francisco-Oakland Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R74/2	Re, J. January 4, 1974	Wood Mosaic Industries, Inc.	R59/5952, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R74/3	Re, J. January 8, 1974	The Akron et al.	R58/16176, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/4	Re, J. January 8, 1974	Atkins, Kroll & Co. et al.	R58/6243, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/5	Re, J. January 8, 1974	Atkins, Kroll & Co. et al.	R58/17226, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/6	Re, J. January 8, 1974	Balfour, Guthrie & Co., Ltd, et al.	R64/7230, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Detroit Japanese plywood
R74/7	Re, J. January 8, 1974	M. S. Cowen Co. et al.	288706-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/8	Re, J. January 8, 1974	M. S. Cowen et al.	R60/22908, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/9	Re, J. January 8, 1974	The East Asiatic Co., Inc.	287148-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/10	Re, J. January 8, 1974	The East Asiatic Co., Inc., et al.	R58/21434, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/11	Re, J. January 8, 1974	Hunter Trading Corp.	R64/9531	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/12	Re, J. January 8, 1974	Industries Unlimited	R61/1888, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/13	Re, J.	Foshee Plywood &	R61/22216,	Export value: Net	Not stated	U.S. v. Getz Bros. &	Houston

	January 8, 1974			7¼%, net packed			
R74/13	Re, J. January 8, 1974	Kochton Plywood & Veneer Co., Inc., et al.	R61/22316, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/14	Re, J. January 8, 1974	National Carloading Corp.	R58/16954, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/15	Re, J. January 8, 1974	National Carloading Corp. et al.	R60/7084, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/16	Re, J. January 8, 1974	Robert S. Osgood	R59/18050, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/17	Re, J. January 8, 1974	Pan Pacific Overseas Corp.	R59/8231, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. V. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/18	Re, J. January 8, 1974	Pan Pacific Overseas Corp.	R59/13712	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/19	Re, J. January 8, 1974	Pan Pacific Overseas Corp.	R60/12261, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/20	Re, J. January 8, 1974	Pan Pacific Overseas Corp.	R61/7906, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R74/21	Re, J. January 8, 1974	E. J. Stanton & Son, Inc., et al.	R60/4823, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros & Co. et al. (C.A.D. 927)	San Diego Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/22	Re, J. January 8, 1974	Toyomenka, Inc.	R60/1882, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/23	Re, J. January 8, 1974	Wood Mosaic Industries, Inc.	R58/11891, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/24	Maletz, J. January 10, 1974	Mitsubishi International Corp.	R61/24238, etc.	American selling price	As shown in schedule "B", attached to decision and judgment, for respective pattern numbers and sizes listed therein, per pair, net packed	Agreed statement of facts	Houston Footwear
R74/25	Maletz, J. January 10, 1974	Nichimen Co., Inc.	R70/3991, etc.	Export value: Appraised unit value less the "buying commission" paid to Nichimen Co., Ltd., of Japan	Not stated	Judgment on the pleadings	New York Chinaware
R74/26	Re, J. January 10, 1974	Bentley Markey Co.	R60/20976, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/27	Re, J. January 10, 1974	Borneo Sumatra Trading Co., Inc., et al.	R58/23365, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/28	Re, J.	M. S. Cowen Co. et	R58/27267,	Export value: Net ap-	Not stated	U.S. v. Getz Bros. &	San Francisco

R74/28	Re. J. January 10, 1974	M. S. Cowen Co. et al.	R58/27267, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/29	Re. J. January 10, 1974	Getz Bros. & Co.	R58/23416, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/30	Re. J. January 10, 1974	W. R. Grace & Co. et al.	R59/545, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/31	Re, J. January 10, 1974	Industries Unlimited	R61/534, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/32	Re, J. January 10, 1974	Jacoberg Overseas, Inc.	R59/5953, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/33	Re, J. January 10, 1974	Mattoon & Co., Inc., et al.	R62/5968, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/34	Re, J. January 10, 1974	United States Plywood Corp.	R59/14985, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/35	Re, J. January 10, 1974	United States Plywood Corp.	R59/16605, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/36	Re, J. January 10, 1974	Wood Mosaic Industries, Inc.	R63/7408	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk-Newport News Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/37	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/6600	Constructed value	Radios: $1.53, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/38	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/8326	Constructed value	Radios: $6.196, each, net packed Earphones: $0.12, each, net packed Batteries: $0.021, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/39	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12388	Constructed value	Radios: $5.796, each, net packed Earphones: $0.12, each, net packed Batteries: $0.021, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/40	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12389	Constructed value	Radios: $5.78, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/41	Watson, J.	Topp Import & Ex-	R68/12393	Constructed value	Radios: $1.796, each, net		

R74/41	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12393	Constructed value	Radios: $5.796, each, net packed Earphones: $0.12, each, net packed Batteries: $0.021, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/42	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12394	Constructed value	Radios: $4.796, each, net packed Earphones: $0.12, each, net packed Batteries: $0.021, each, net packed	Judgment on the pleadings	Miami Transistor radios with batteries and earphones
R74/43	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12395	Constructed value	Radios: $4.796, each, net packed Earphones: $0.12, each, net packed Batteries: $0.021, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/44	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12396	Constructed value	Invoice unit values: $3.30, Model RS–68C, each; $2.95, Model RS–61, each	Judgment on the pleadings	Miami Transistor radios
R74/45	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/12401	Constructed value	Radios: $1.53, Model AK–96, each, net packed; $1.88, Model AK–910, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/46	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/14161	Constructed value	Invoice unit value: $5.55 each radio	Judgment on the pleadings	Miami Transistor radios
R74/47	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/14162	Constructed value	Invoice unit value: $3.30 each, Model RS-68C; $2.95 each, Model RS-61	Judgment on the pleadings	Miami Transistor radios
R74/48	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/17570	Constructed value	Radios: $5.53, Model TFM-122, each, net packed; $6.41, Model T-210, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios, with earphones and batteries
R74/49	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/17571	Constructed value	Radios: $5 44, Model TFM-122, each, net packed; $6.31, Model T-1490, each, net packed; $6.526, Model TK-114, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, Models TFM-122 and T-1490, each, net packed; $0.021, Model TK-114, each, net packed	Judgment on the pleadings	Miami Transistor radios, with earphones and batteries
R74/50	Watson, J.	Topp Import &	R68/18709	Constructed value	Radios: $2.03, each, net	Judgment on the plead-	Miami

					each, net packed		
R74/50	Watson, J. January 11, 1974	Topp Import & Export, Inc.	R68/18709	Constructed value	Radios: $2.03, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/51	Watson, J. January 14, 1974	New York Merchandise Co., Inc.	R70/742	Export value: Invoice unit values plus all charges including the commission without the addition of the 9.16% value advance	Not stated	Judgment on the pleadings	San Diego Walkie talkies
R74/52	Newman, J. January 14, 1974	Park Avenue Imports	R64/17986	Export value: Invoice unit value in U.S. currency	Not stated	Judgment on the pleadings Park Avenue Imports v. U.S. (A.R.D. 255)	Chicago Boys pants
R74/53	Rao, J. January 17, 1974	Millmaster International, Inc., et al.	R64/15548, etc.	United States value	Set forth in schedule "B" attached to decision and judgment	Millmaster International, Inc., et al. v. U.S. (C.A.D. 987)	Houston Thiourea
R74/54	Rao, J. January 17, 1974	Millmaster International, Inc., et al.	R64/19712, etc.	United States value	Set forth in schedule "B" attached to decision and judgment	Millmaster International, Inc., et al. v. U.S. (C.A.D. 987)	Baltimore Thiourea
R74/55	Rao, J. January 17, 1974	Samuel Shapiro & Co., Inc., for a/c Millmaster International, Inc.	R58/20314	United States value	Set forth in schedule "B" attached to decision and judgment	Millmaster International, Inc., et al. v. U.S. (C.A.D. 987)	Baltimore Thiourea
R74/56	Ford, J. January 17, 1974	Shalom & Co.	R67/6609	Export value: Appraised value, less the buying commission, as stated on the invoice	Not stated	Shalom Baby Wear, Inc. v. U.S. (R.D. 10905)	New York Cotton articles of wearing apparel

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/57	Landis, J. January 17, 1974	Consolidated Merchandising Corp.	71-7-00514	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, or tape recorders assembled in and exported from Taiwan
R74/58	Watson, J. January 17, 1974	Topp Import & Export, Inc.	R68/6601	Constructed value	14-transistor radios (1,500): $6.526, each, net packed Batteries (6,000): $0.021, each, net packed 12-transistor radios (343): $5.54 each, net packed Batteries (342): $0.10, each net packed Earphones (1,843): $0.12, each net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/59	Watson, J. January 17, 1974	Topp Import & Export, Inc.	R68/12397	Constructed value	$2.95 each radio, net packed	Judgment on the pleadings	Miami Transistor radios

	January 17, 1974	port, Inc.			packed	ings	Transistor radios
R74/60	Watson, J. January 17, 1974	Topp Import & Export, Inc.	R68/12308	Constructed value	Invoice unit value: $1.75 each radio	Judgment on the pleadings	Miami Transistor radios
R74/61	Watson, J. January 17, 1974	Topp Import & Export, Inc.	R68/12309	Constructed value	Invoice unit value: $1.75 each radio	Judgment on the pleadings	Miami Transistor radios
R74/62	Watson, J. January 17, 1974	Topp Import & Export, Inc.	R68/14160	Constructed value	Invoice unit values: $6.53 each Model T-1490; $6.73 each Model TK-114; $5.66 each Model TFM-122	Judgment on the pleadings	Miami Transistor radios
R74/63	Landis, J. January 24, 1974	Oloha Airlines, Inc.	R67/20807	Export value	$2,550,796	Judgment on the pleadings	Minneapolis BAC twin jet passenger aircraft
R74/64	Landis, J. January 24, 1974	American Honda Motor Co., Inc.	R71/83	Constructed value	$772	Judgment on the pleadings	New York Motorcycles, model No. CB 750
R74/65	Landis, J. January 24, 1974	American Honda Motor Co., Inc.	R71/84	Constructed value	Model No. CT 70: $159.50 Model No. CT 90K1: $169	Judgment on the pleadings	New York Motorcycles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/66	Landis, J. January 24, 1974	RCA Corporation	R70/8338, etc.	Constructed value	Radios (exclusive of earphones, batteries, instruction books and switches): Models RZM 146, RZM 146A and RZM 146B, $6.08 each, net packed; Models RZM 170, RZM 170A, RZM 170E and RZM 170R, $11.64, each, net packed; Models RZM 151 and RZM 151E, $6.78 each, net packed.	Judgment on the pleadings	Los Angeles Radios
R74/67	Watson, J. January 24, 1974	Topp Import & Export, Inc.	R68/6599	Constructed value	Radios: $1.53 each, net packed Earphones: $0.12 each, net packed Batteries: $0.10 each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/68	Re, J. January 24, 1974	Borneo Sumatra Trading Co., Inc.	R60/22045, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston Japanese plywood
R74/69	Re, J. January 24, 1974	Herbert B. Moller	R61/15683	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Jacksonville (Tampa) Japanese plywood
R74/70	Landis, J.	M. J. Feldman, Inc.,	R67/11550	Constructed value	As set forth in schedule	Agreed statement of	New York

	January 24, 1974			Net appraised value less 7¼%, net packed		Co. et al. (C.A.D. 927)	Japanese plywood
R74/70	Landis, J. January 29, 1974	M. J. Feldman, Inc., et al.	R67/11550, etc.	Constructed value	As set forth in schedule attached to decision and judgment	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R74/71	Watson, J. February 8, 1974	Topp Import & Export, Inc.	R68/12400	Constructed value	Invoice unit value: $6.60 each, Model TR-114; $5 each, Model TFM-122	Judgment on the pleadings	Miami Transistor radios
R74/72	Watson, J. February 8, 1974	Topp Import & Export, Inc.	R68/14159	Constructed value	Invoice unit value: $6.60 each, Model T-210; $6.52 each, Model T12-90; $5.75 each, Model TFM-122	Judgment on the pleadings	Miami Transistor radios
R74/73	Watson, J. February 8, 1974	Topp Import & Export, Inc.	R68/18708	Constructed value	Radios: $1.88, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/74	Watson, J. February 8, 1974	Topp Import & Export, Inc.	R69/3255	Constructed value	Radios: $1.53, each, net packed Earphones: $0.12, each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/75	Landis, J. February 11, 1974	American Honda Motor Co., Inc.	R69/12800	Constructed value: Model Nos. CT 70, CL 90, CT 90K1 Export value: Model Nos. CL 70, and CB 175K3	CL 70: $146; CT 70: $159.50; CL 90: $165; CT 90K1: $169; CB 175K3: $316	Judgment on the pleadings	Norfolk Motorcycles
R74/76	Landis, J. February 11, 1974	American Honda Motor Co., Inc.	R69/12801	Constructed value: Model Nos. CB 350, CT 90K1, CL 450K2, Z50AK1 Export value: Model Nos. PC 50 and CD 175K3	PC 50: $70; CD 175K3: $261; CB 350: $372.40; CT 90K1: $169; CL 450K2: $529.20; Z50-AK1: $125	Judgment on the pleadings	Norfolk Motorcycles
R74/77	Landis, J. February 11, 1974	American Honda Motor Co., Inc.	R69/12802	Constructed value: Model Nos. CL 350, CL 450, CB 450, CB 750, CB 350 Export value: Model No. CB 175K3	CB 175K3: $316; CL 350: $382.40; CL 450: $529.20; CB 450: $514.20; CB 750: $772; CB 350: $372.40	Judgment on the pleadings	Norfolk Motorcycles
R74/78	Landis, J. February 11, 1974	American Honda Motor Co., Inc.	R70/5823	Constructed value: Model Nos. CL 450K2, CB 750, Z50 AK1 Export value: Model No. CB 175K3	CB 175K3: $316; CL 450K2: $529.50; CB 750: $772; Z50AK1: $125	Judgment on the pleadings	New York Motorcycles
R74/79	Landis, J.	American Honda	R71/85	Constructed value:	CB 350K2: $373; CB	Judgment on the plead-	New York

				No. CB 175K3			
R74/79	Landis, J. February 11, 1974	American Honda Motor Co., Inc.	R71/85	Constructed value: Model Nos. CB 450K2 and CB 750 Export value: Model No. CB 350K2	CB 350K2: $373; CB 450K2: $514.20; CB 750: $772	Judgment on the pleadings	New York Motorcycles
R74/80	Landis, J. February 11, 1974	Joseph H. Brown & Son	R68/13754	Export value	Invoice value of $12,746.25 (i.e., invoice unit value of $0.1375 per lb.), less insurance of $11.97, less nondutiable charges (including prepaid duties) of $1,750.38; which dutiable value equals $10,983.90	Judgment on the pleadings	El Paso Strawberries
R74/81	Landis, J. February 11, 1974	The Easterling Co. et al.	R70/9696, etc.	Export value: Porcelain ware, entry 123824 in R70/9696: Invoice unit prices, net packed; 192 pieces of "Sweetheart Rose" large 15-inch platters, order 6756, entry 127926 in R70/9697: 6 West German Marks each, net packed; appraised values sustained as to all other merchandise in entry 127926; cuckoo clocks, entry 112750 in R70/9743: Invoice unit prices, net packed	Not stated	Judgment on the pleadings	Chicago Porcelain ware, tableware, and cuckoo clocks

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/82	Landis, J. February 11, 1974	Mercury Radio & Battery Corp.	R70/9285	Constructed value	Radios: $2.52 each, net packed Batteries: $0.10 each, net packed Earphones: $0.08 each, net packed	Judgment on the pleadings	San Francisco Transistor radios with earphones and batteries
R74/83	Landis, J. February 11, 1974	Ross Electronics	71-10-01520	Constructed value	Set forth in column 4 of schedule attached to decision and judgment under heading "Unit Value for Each Article of Merchandise, Net Packed" for various articles described in column 2	Judgment on the pleadings	Chicago Radios, batteries, earphones; combination articles consisting of radios and clock movements; etc.
R74/84	Landis, J. February 11, 1974	Topp Import & Export, Inc.	R68/12956	Constructed value	Radios: $1.53 each, net packed Earphones: $0.12 each, net packed Batteries: $0.10 each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/85	Landis, J.	Westinghouse Electric	R70/2500	Constructed value	Various values for radios	Judgment on the pleadings	New York

R74/85	Landis, J. February 11, 1974	Westinghouse Electric Corp.	R70/3590, etc.	Constructed value	Various values for various combination articles as indicated in decision and judgment for entries enumerated on schedules A through F	Judgment on the pleadings	New York Combination articles, consisting of radios, and in most cases clock movements, and various other articles (pens, telephone pick-ups, winking lights, flashlights, earphones, batteries)
R74/86	Landis, J. February 13, 1974	Montgomery Ward & Co.	71-7-00477	Constructed value Radios: Models 62-1441 and 62-1451 (exclusive of earphones and batteries): f.o.b. invoice unit value less $0.39, each, net packed; Model 62-1159 (exclusive of earphone): f.o.b. invoice unit value less $0.07, each, net packed Radio chassis: f.o.b. invoice unit value, each, net packed	Not stated	Judgment on the pleadings	New York Radio chassis, transistor radio sets, and radios assembled in and exported from Taiwan

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/87	Landis, J. February 13, 1974	Topp Import & Export, Inc.	R68/17583	Constructed value	Radios: Model AK-910, $1.88, each, net packed; Model AK-916, $2.03, each, net packed; Model AK-96, $1.53, each, net packed Earphones: $0.12 each, net packed Batteries: $0.10, each, net packed	Judgment on the pleadings	Miami Transistor radios with earphones and batteries
R74/88	Landis, J. February 13, 1974	Transamerican Electronics Int'l, Inc.	71-10-01518	Constructed value	Entry 100168: Radios, $7.24, each, net packed; Earphones, $0.12, each, net packed For all other merchandise: f.o.b. invoice unit values, net packed	Judgment on the pleadings	Chicago Radio chassis, transistor radio sets, and radios (with or without accessories) assembled in and exported from Taiwan
R74/89	Re, J. February 13, 1974	International Expediters, Inc.	R70/3412, etc.	Constructed value: f.o.b. invoice unit values	Not stated	Judgment on the pleadings	Chicago Radio chassis Models FHT-6, FHT-8 and FHT-9
R74/90	Re, J. February 13, 1974	Atkins, Kroll & Co. et al.	R58/27375, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/91	Re, J. February 13, 1974	Atkins, Kroll & Co., Ltd., et al.	R61/10383, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Savannah Japanese plywood
R74/92	Re, J. February 13,	The Beton Co., Inc., et al.	R58/3941, etc.	Export value: Net appraised value less	Not stated	U.S. v. Getz Bros. &	Los Angeles

	1974			7¼%, net packed			
R74/92	Re, J. February 13, 1974	The Beton Co., Inc., et al.	R58/3941, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/93	Re, J. February 13, 1974	Biddle Purchasing Co.	R62/12078	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/94	Re, J. February 13, 1974	Borneo Sumatra Trading Co., Inc.	284514-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/95	Re, J. February 13, 1974	Borneo Sumatra Trading Co., Inc.	R58/14780, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/96	Re, J. February 13, 1974	Borneo Sumatra Trading Co., Inc.	R58/18826, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/97	Re, J. February 13, 1974	Borneo Sumatra Trading Co., Inc., et al.	R60/2056, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/98	Re, J. February 13, 1974	Geo. S. Bush & Co., Inc., et al.	R59/1638, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/99	Re, J. February 13, 1974	Geo. S. Bush & Co., Inc.	R59/5640, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/100	Re, J. February 13, 1974	W. J. Byrnes & Co. of L.A., Inc., et al.	R60/4772, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/101	Re, J. February 13, 1974	Castelazo & Associates et al.	R58/16708, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/102	Re, J. February 13, 1974	Castelazo & Associates et al.	R59/4630, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/103	Re, J. February 13, 1974	Castelazo & Associates et al.	R59/17741, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/104	Re, J. February 13, 1974	Dant & Russell, Inc., et al.	R59/12764, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/105	Re, J. February 13, 1974	Getz Bros. & Co. et al.	R58/18033, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood
R74/106	Re, J. February 13, 1974	Getz Bros. & Co., Inc.	R58/26279, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/107	Re, J. February 13, 1974	Isbrandtsen Co. of Calif., Inc., et al.	R59/2453, etc	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/108	Re, J. February 13, 1974	National Carloading Corp.	R58/16951, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/109	Re, J.	Pacific Wood Products	283170-A,	Export value: Net ap-	Not stated	U.S. v. Getz Bros. &	Houston

	1974			7¼%, net packed		927)	
R74/109	Re, J. February 13, 1974	Pacific Wood Products Co. et al.	283170-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/110	Re, J. February 13, 1974	Pacific Wood Products Co.	R62/13418, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Bridgeport Japanese plywood
R74/111	Re, J. February 13, 1974	Pan Asiatic Trading Co., Inc., et al.	R58/28170, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/112	Re, J. February 13, 1974	Pan Asiatic Trading Co., Inc.	R60/7932, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/113	Re, J. February 13, 1974	Pan Pacific Overseas Corp.	R58/22382, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/114	Re, J. February 13, 1974	Pan Pacific Overseas Corp.	R59/5612, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/115	Re, J. February 13, 1974	Pan Pacific Overseas Corp.	R59/9424, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/116	Re, J. February 13, 1974	Pan Pacific Overseas Corp.	R60/12035, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/117	Re, J. February 13, 1974	Pan Pacific Overseas Corp. et al.	R60/12070, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/118	Re, J. February 13, 1974	R. W. Smith	R64/7302	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/119	Re, J. February 13, 1974	United States Plywood Corp.	287043-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/120	Re, J. February 13, 1974	United States Plywood Corp.	R58/18184, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Newport News (Norfolk) Japanese plywood
R74/121	Re, J. February 13, 1974	United States Plywood Corp.	R58/27752, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/122	Re, J. February 13, 1974	United States Plywood Corp.	R59/713, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/123	Re, J. February 13, 1974	United States Plywood Corp.	R59/6405, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/124	Re, J. February 13, 1974	United States Plywood Corp.	R59/9810, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/125	Re, J. February 13, 1974	United States Plywood Corp.	R64/20073	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Rochester (Buffalo) Japanese plywood
R74/126	Re, J.	Wood Mosaic Indus-	R58/25395	Export value: Net ap-	Not stated	U.S. v. Getz Bros. &	San Francisco

	February 13, 1974	wood Corp.		praised value less 7¼%, net packed		Co. et al. (C.A.D. 927)	Japanese plywood
R74/126	Re, J. February 13, 1974	Wood Mosaic Industries, Inc.	R58/25395, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/127	Re, J. February 13, 1973	Wood Mosaic Industries, Inc.	R59/1488	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R74/128	Richardson, J. February 19, 1974	The Florsheim Shoe Company, Division of Interco, Inc.	R70/2483	Foreign value: Appraised unit values, net, packed, less 1 percent cash discount	Not stated	Agreed statement of facts	Chicago Calf upper leather
R74/129	Watson, J. February 19, 1974	Cavalier Shipping Co., Inc., et al.	R69/10252, etc.	Export value: Entered value, in each case, which is the invoice unit price less nondutiable charges	Not stated	Cavalier Shipping Co. v. U.S. (C.D. 4317, aff'd C.A.D. 1103)	Norfolk Methyl bromide with 2% chloropicrin which is a halogenated hydrocarbon held properly classifiable under item 429.48 in C.D. 4317, *supra*
R74/130	Re, J. February 19, 1974	Biddle Purchasing	R61/5681, etc.	Export value: Net appraised value less 7¼% net packed	Not stated	U. S. v. Getz Bros. Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/131	Re, J. February 19, 1974	United States Plywood Corp.	R59/12196, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood

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R74/132	Ford, J. February 20, 1974	A & A Trading Corp.	73-3-00786-S	Constructed value	Listed on schedule attached to decision and judgment in columns designated "Claimed Values" for each imported article, net packed	Agreed statement of facts	Los Angeles Radios imported with batteries and clock radios
R74/133	Ford, J. February 20, 1974	A & A Trading Corp.	73-3-00787	Constructed value	Listed on schedule attached to decision and judgment in columns designated "Claimed Values" for each imported article, net packed	Agreed statement of facts	Seattle Various radios imported together with batteries and clock radios
R74/134	Watson, J February 20, 1974	Meadows Wye & Co., Inc., et al.	R63/9411, etc.	Constructed value: Invoice unit values in U.S. currency	Not stated	Meadows Wye & Co., Inc. v. U.S. (R.D. 11706)	New York Cosmetic preparations
R74/135	Re, J. February 20, 1974	Biddle Purchasing Co. et al.	R61/8274, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/136	Re, J. February 20, 1974	Jacoberg Overseas, Inc.	R59/101, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/137	Re, J. February 20, 1974	Pan Pacific Overseas Corp.	R61/4147, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/138	Re, J.	Pan Pacific Overseas	R61/9077,	Export value: Net ap-	Not stated	U.S. v. Getz Bros. &	Detroit

	February 20, 1974	Corp.	etc.	7¼%, net packed			
R74/138	Re, J. February 20, 1974	Pan Pacific Overseas Corp.	R61/9077, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Detroit Japanese plywood
R74/139	Re, J. February 20, 1974	United States Plywood Corp.	R58/17072, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/140	Re, J. February 20, 1974	United States Plywood Corp.	R61/4173, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/141	Ford, J. March 5, 1974	A & A Trading Corp.	72-2-00312-8	Constructed value	Listed on schedule attached to decision and judgment in column designated "Claimed Values" for each article, net packed	Agreed statement of facts	Los Angeles Various radios imported together with earphones and batteries and clock radios, assembled in Taiwan from parts imported from Japan
R74/142	Ford, J. March 5, 1974	A & A Trading Corp.	73-2-00788-8	Constructed value	Listed on schedule attached to decision and judgment in columns designated "Claimed Values" for each imported article, net packed	Agreed statement of facts	Seattle Various radios imported together with earphones and batteries and clock radios
R74/143	Ford, J. March 5, 1974	Amerex Trading Corp et al.	71-7-00490, etc.	Constructed value	$7.80 each (entry 182737/70) $50 each (entries 274209/70 and 258555/70)	Agreed statement of facts	New York Stereo receivers and radios

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R74/144	Ford, J. March 5, 1974	Kanematsu Gosho, Inc.	71-11-01622, etc.	Constructed value	As indicated on schedule "B" attached to decision and judgment	Agreed statement of facts	Chicago Transistor radios (articles shown on said schedule)
R74/145	Watson, J. March 5, 1974	Exbrook, Inc.	R68/9503, etc.	Export value: Invoiced unit prices plus a prorated portion of the items marked "X"	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R74/146	Watson, J. March 5, 1974	Exbrook, Inc., et al.	R68/6993, etc.	Export value: Invoiced unit prices	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R74/147	Re, J. March 6, 1974	J. M. Altieri	R61/8707, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Juan Japanese plywood
R74/148	Re, J. March 6, 1974	J. Wm. Back Company et al.	R59/13930, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/149	Re, J. March 6, 1974	Borneo Sumatra Trading Co., Inc., et al.	R59/13585, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland (Oreg.)) Japanese plywood
R74/150	Re, J. March 6, 1974	N. D. Cunningham & Co., Inc.	R61/13144, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R74/151	Re, J. March 6, 1974	United States Plywood Corp.	R60/6554, etc.	Export value: Net appraised value less 7¼%	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood

R74/151	Re, J. March 6, 1974	United States Plywood Corp.	R60/6554, etc.	Export value: Net appraised value less 7¼% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R74/152	Re, J. March 6, 1974	H. Zwart & Co., Inc., et al.	R60/13981, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/153	Watson, J. March 7, 1974	S. Dennis, Inc., et al.	R68/6785, etc.	Export value: Invoiced unit prices plus a prorated portion of items marked "X"	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R74/154	Re, J. March 7, 1974	Atkins, Kroll & Co., Ltd., et al.	R59/2036, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/155	Re, J. March 7, 1974	Balfour Guthrie & Co., Inc., et al.	R61/17820, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/156	Re, J. March 8, 1974	Aircargo Brokerage Co. et al.	R58/13502, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/157	Re, J. March 8, 1974	D. C. Andrew & Co. of Md., Inc., et al.	R59/16851, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/158	Re, J. March 8, 1974	Atkins, Kroll & Co. et al.	R59/15735, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/159	Re, J. March 8, 1974	J. Gerber & Co., Inc.	R58/6613, etc.	Export value: Net appraised value less 7¼%, net packed.	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood

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R74/160	Re, J. March 8, 1974	Getz Bros. & Co., Inc.	R58/18844, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Pensacola (Tampa) Japanese plywood
R74/161	Re, J. March 8, 1974	Pacific Wood Products Co.	R58/18053, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/162	Re, J. March 8, 1974	Wood Mosaic Industries, Inc.	R58/25392, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/163	Ford, J. March 13, 1974	Consolidated Merchandising Corp. et al.	R68/17497, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R74/164	Ford, J. March 13,	Ross Electronics Corp.	R71/47, etc.	Constructed value	Unit values as set forth in column number 3	Judgment on the pleadings	Chicago Combination articles

							in and exported from Taiwan
R74/164	Ford, J. March 13, 1974	Ross Electronics Corp.	R71/47, etc.	Constructed value	Unit values as set forth in column number 3 of schedule attached to decision and judgment	Judgment on the pleadings	Chicago Combination articles each consisting of a radio, clock movement and lamp assembled in Taiwan (2500 radios covered by Court No. R71/49, entry No. 20676 not included)
74/165	Ford, J. March 13, 1974	Spiegel, Inc., et al.	71-12-02122, etc.	Constructed value	Radios: $17.82, each, net packed Clock radio (exclusive of clock portion): $9.90, each, net packed Clocks: $3.60, each, net packed Earphones: $0.06, each, net packed Batteries: $0.22, each, net packed	Judgment on the pleadings	Chicago Radios assembled in and exported from Taiwan together with earphones and batteries and clock radios
R74/166	Ford, J. March 13, 1974	Westinghouse Electric Corp.	R70/289, etc.	Constructed value	Unit values set forth in schedule attached to decision and judgment in column 3 headed "Unit Value for Each Article of Merchandise, Net Packed"	Summary judgment	New York Combination articles consisting of radios and various other articles (batteries, earphones, clock movements, flashlights, cigarette lighters, pens, telephone pick-ups)

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R74/167	Ford, J. March 13, 1974	Westinghouse Electric Corp.	71-8-00930, etc.	Constructed value	Unit values set forth in schedule attached to decision and judgment in column 4 headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the pleadings	New York Combination articles each consisting of a radio, flashlight, cigarette lighter, and watch movement, imported together with a battery, assembled in and exported from Taiwan
R74/168	Re, J. March 13, 1974	The Beton Co.	R58/28457, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/169	Re, J. March 13, 1974	Geo. S. Bush & Co., Inc., et al.	R59/855, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/170	Re, J. March 13, 1974	Geo. S. Bush & Co., Inc. et. al.	R59/18917, etc.	Export value Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/171	Re, J. March 13, 1974	Getz Bros. & Co., Inc., et al.	R58/908, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/172	Re, J. March 13, 1974	Maher & Company et al.	R61/19517, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co.et al. (C.A.D. 927)	Houston Japanese plywood
R74/173	Re, J. March 13,	Robert S. Osgood	R58/18183,	Export value:	Not stated	U.S. v. Getz Bros. &	Norfolk-Newport

R74/173	Re, J. March 13, 1974	Robert S. Osgood et al.	R58/18183, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk-Newport News Japanese plywood
R74/174	Re, J. March 13, 1974	Wood-Mosaic Industdustries, Inc.	R61/23328, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/175	Re, J. March 13, 1974	Zeesman Plywood Corp. et al.	R58/1356, etc.	Export value: Net appraised value less 7 ¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/176	Re, J. March 13, 1974	A. B. Zwebell	R59/8372, etc.	Export value: Net appraised value less 7 ¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/177	Re, J. March 15, 1974	B.R. Anderson & Co. et al.	R61/4172, etc.	Export value: Net appraised value 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

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R74/178	Ford, J. March 18, 1974	Mitsui & Co. (U.S.A.), Inc.	R70/7985	Constructed value	*Radios:* $1.80, $2.151, $2.201, $2.171, $2.529, $2.565, $4.62, $3.27, $6.832 each, net packed (various models shown in decision and judgment); $8.75 each, net packed, for model CR-980, exclusive of clock movement portion *Clock movement portions:* $2.85 each, net packed with value of $2.70 attributable to each of 1,320 clock movements originally exported from U.S. *Earphones:* $0.08 each, net packed *Batteries:* $0.10 each, net packed	Summary judgment	San Francisco Radios and clock-radios imported alone and radios imported together with earphones and batteries
R74/179	Re, J. March 19, 1974	Atkins, Kroll & Co., Ltd., et al.	R61/13149, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R74/180	Re, J. March 19, 1974	Balfour, Guthrie & Co., Ltd., et al.	R65/2583, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood
R74/181	Re, J.	Borneo Sumatra	R50/4600,	Export value: Net	Not stated	U.S. v. Getz Bros. & Co.	Philadelphia

	1974			7¼%, net packed			
R74/181	Re, J. March 19, 1974	Borneo Sumatra Trading Co., Inc.	R59/4690, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/182	Re, J. March 19, 1974	Getz Bros. & Co. et al.	R60/19290, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/183	Re, J. March 19, 1974	Pan Pacific Overseas Corp.	R58/19562, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/184	Re, J. March 19, 1974	Pan Pacific Overseas Corp.	R59/14126, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/185	Re, J. March 19, 1974	Pan Pacific Overseas Corp.	R61/3805, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/186	Re, J. March 19, 1974	Pan Pacific Overseas Corp. et al.	R58/18621, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/187	Re, J. March 19, 1974	Toyomenka, Inc.	R59/85, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

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R74/188	Re, J. March 19, 1974	Toyomenka, Inc., et al.	R58/2017, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/189	Re, J. March 19, 1974	United States Plywood Corp.	R58/2990, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/190	Re, J. March 19, 1974	United States Plywood Corp.	R60/10019, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood
R74/191	Richardson, J. March 20, 1974	A & A Trading Corp.	72-6-01476	Constructed value	Listed on schedule attached to decision and judgment in column designated "Claimed Values" for each imported article, net packed	Agreed statement of facts	New York Various radios imported together with earphones and batteries
R74/192	Richardson, J. March 20, 1974	Consolidated Merchandising Corporation	73-9-02700	Constructed value	As set forth in schedule annexed to decision and judgment	Agreed statement of facts	New York Radio receivers imported together with earphones, assembled in and exported from Taiwan

R74/193	Richardson, J. March 20, 1974	Consolidated Sewing Machine Corp.	R69/1339	Constructed value	Transceiver: $3.988, each, packed Batteries: 20¢ each	Agreed statement of facts	Los Angeles-Long Beach Solid state (tubeless) transceivers with batteries
R74/194	Richardson, J. March 20, 1974	Consolidated Sewing Machine Corp. et al.	R69/1462, etc.	Constructed value	Tape recorders in each importation: $5.10, each, packed Each battery in importation the subject of R69/13449: $0,034	Agreed statement of facts	Los Angeles-Long Beach Tape recorders, Model 415 alone or with batteries assembled in and exported from Taiwan
R74/195	Richardson, J. March 20, 1974	Kanematsu-Gosho USA, Inc.	R68/15436, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, imported together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R74/196	Richardson, J. March 20, 1974	Railway Express Agency Sharp Point Fish Hook Co.	R70/3437, etc.	Constructed value	$.5547 per gross (importations before 1/1/69) $.5528 per gross (importations after 12/31/68) Values include U.S. components assembled abroad valued at $.1075 per gross	Agreed statement of facts	Denver (El Paso) Assembled snelled fishhooks

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/197	Re, J. March 20, 1974	Atkins, Kroll & Co., Ltd., et al.	R63/7061, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/198	Re, J. March 20, 1974	Getz Bros. & Co.	287149-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/199	Re, J. March 20, 1974	Charles A. Redden, Inc., et al.	R61/5017, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Newark (New York) Japanese plywood
R74/200	Re, J. March 20, 1974	United States Plywood Corp.	286165-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/201	Re, J. March 27, 1974	Dant & Russell, Inc., et al.	R62/14510, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/202	Re, J. March 27, 1974	Getz Bros. & Co., et al.	288404-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/203	Re, J. March 27, 1974	Pan Asiatic Trading Co., Inc.	R58/4049, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

	1974			7¼%, net packed			
R74/204	Re, J. March 27, 1974	Toyomenka, Inc., et al.	R59/2783, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/205	Re, J. March 27, 1974	The Walled Lake Door Co., et al.	R61/18065, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/206	Re, J. March 27, 1974	James G. Wiley, et al.	R58/2206, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/207	Richardson, J. March 29, 1974	Alfred C. Toepfer, Inc., et al.	71-10-01519, etc.	Constructed value	Set forth in schedule attached to decision and judgment in column No. 5 headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the pleadings	Chicago Radio chassis, radios, earphones, batteries, transistor radios, radios (Models RPA-10 and RPF-30) and batteries imported with these models
R74/208	Re, J. April 10, 1974	Balfour, Guthrie & Co. et al.	R58/26552, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/209	Re, J. April 10, 1974	Blaser & Mericle, Inc.	R63/15361, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D 927)	Cleveland Japanese plywood
R74/210	Re, J. April 10, 1974	Castelazo & Associates et al.	R59/166, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/211	Re, J. April 10, 1974	M. S. Cowen Co. et al.	R59/16236, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/212	Re, J. April 10, 1974	Daiichi Bussan Kaisha, Ltd., et al.	R60/3281, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/213	Re, J. April 10, 1974	Getz Bros. & Co. et al.	R59/2768, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R/74/214	Re, J. April 10, 1974	Getz Bros. & Co., Inc., et al.	R60/5872, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/215	Re, J. April 10, 1974	W. R. Grace & Co. et al.	R58/4009, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/216	Re, J. April 10, 1974	Industries Unlimited	R61/1557	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/217	Re, J. April 10, 1974	Scarburgh Co., Inc., et al.	R60/508, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/218	Re, J.	Toyomenka, Inc.	R61/246	Export value:	Not stated	U.S. v. Getz Bros. &	Los Angeles

				less 7¼%, net packed		927)	
R74/218	Re, J. April 10, 1974	Toyomenka, Inc.	R61/246, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/219	Re, J. April 10, 1974	United States Plywood Corp.	R61/2949, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood
R74/220	Richardson, J. April 11, 1974	A & A Trading Corp.	72-1-00202	Constructed value	Listed on schedule attached to decision and judgment in column designated, "Claimed Values" for each article, net packed	Agreed statement of facts	Philadelphia Various radios assembled in Taiwan from parts imported from Japan
R74/221	Richardson, J. April 11, 1974	A & A Trading Corp.	72-4-00897, etc.	Constructed value	Listed on schedule attached to decision and judgment in column designated "Claimed Values" for each article, net packed	Agreed statement of facts	Los Angeles Various radios and clock radios assembled in Taiwan from parts imported from Japan
R74/222	Richardson, J. April 11, 1974	A. N. Deringer, Inc.	72-3-00720	Export value	As shown on schedule attached to decision and judgment	Agreed statement of facts	Alexandria Bay (Ogdensburg) Coated fabrics
R74/223	Maletz, J. April 17, 1974	Comel International Corp.	72-11-02463	Constructed value: Equal to landed cost of U.S. goods in Haiti plus costs reflected on commercial invoices for assembly and labor, general expenses and profit, plus cost of containers and packing	Not stated	Agreed statement of facts	San Juan Controls, resistors, circuit breakers and other electronic components

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/224	Re, J. April 17, 1974	Frank P. Dow Co., Inc., et al.	R58/27745, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R74/225	Re, J. April 17, 1974	W.R. Grace & Co. Pac. Coast Div.	298525-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/226	Re, J. April 17, 1974	United States Plywood Corp.	R58/24786, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/227	Maletz, J. April 18, 1974	Import-Export Corporation of Texas	71-8-00953	Export value: Invoiced unit values, net packed (entries 102161, 101099, 124163, 123605, 114233) (on plaintiff's motion for judgment on the pleadings)	Not stated (Defendant's motion to dismiss action in part granted; action dismissed as to entries 110890, 114209, 114646, 114812, 114814, 119285)	Order granting plaintiff's motion for judgment on the pleadings Order granting defendant's motion to dismiss in part	Houston Wigs and similar articles
R74/228	Maletz, J. April 19, 1974	RCA Corporation	72-1-00103	Constructed value	Unit values set forth in schedule attached to decision and judgment in column no. (4) which is headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the pleadings	Los Angeles Radios, assembled in and exported from Taiwan together with earphones and batteries
R74/229	Re, J. April 19, 1974	C & S Sales Co. et al.	R64/2005, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

	April 19, 1974		etc.	praised value less 7¼%, net packed		et al. (C.A.D. 927)	Japanese plywood
R74/230	Maletz, J. April 22, 1974	International Expediters, Inc.	71-11-01865	Constructed value	Unit values set forth in schedule A attached to decision and judgment in column no. (4) which is headed "Unit Value for Each Article of Merchandise, Net Packed" (Protests covering entries listed in schedule B dismissed for lack of jurisdiction)	Judgment on the pleadings	Chicago Radio chassis and radios, assembled in and exported from Taiwan, with or without earphones and/or batteries
R74/231	Re, J. May 9, 1974	Export Pacific et al.	281651-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/232	Maletz, J. May 10, 1974	A & A Trading Corp.	72-9-02039	Constructed value	Listed on schedule, attached to decision and judgment, in column designated "Claimed Values", for each imported article, net packed	Agreed statement of facts	Los Angeles Various radios imported together with earphones and batteries and clock radios
R74/233	Maletz, J. May 10, 1974	Marubeni-Iida (America), Inc.	R68/12157	Export value: Invoice unit price, net packed, less ocean freight and marine insurance	Not stated	Agreed statement of facts	Los Angeles Milling machines

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/234	Maletz, J. May 10, 1974	Spiegel, Inc., et al.	71-11-01868, etc.	Constructed value	Unit values set forth in schedule "A", attached to decision and judgment, in column 6 which is headed "Unit Value for Each Article of Merchandise, Net Packed" Protest 3901-1-000775 covering entries listed in schedule B, attached to decision and judgment dismissed for lack of jurisdiction	Judgment on the pleadings	Chicago Radios, earphones, batteries, radio chassis
R74/235	Re, J. May 13, 1974	Bentley Markey & Co.	R58/21294, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/236	Re, J. May 13, 1974	Borneo Sumatra Trading Co., Inc., et al.	R58/15715, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/237	Maletz, J. May 14, 1974	Ross Electronics Corp.	72-7-01524	Constructed value	Unit values set forth in schedule, attached to decision and judgment, in column no. 5 headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the pleadings	Chicago Radio receivers which incorporate watch movements

R74/238	Watson, J. May 24, 1974	A & A Trading Corp.	73-2-00417	Export value: Appraised value less the amount described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	New York Stereo receiver with 8 track player and speaker system and or electronic components
R74/239	Re, J. May 24, 1974	Balfour, Guthrie & Co., Ltd., et al.	R62/3842, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R74/240	Re, J. May 24, 1974	Rafael Ferran Martinez	201488-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Juan, P.R. Japanese plywood
R74/241	Re, J. May 24, 1974	Oimatsu Shoten	R64/2348, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Honolulu Japanese plywood
R74/242	Re, J. May 24, 1974	The Windsor Co.	280028-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/243	Re, J. May 29, 1974	Bentley Markey & Co. et al.	R58/21578, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/244	Re, J. May 29, 1974	M. S. Cowen Company et al.	R59/710, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/245	Boe, C. J. June 3, 1974	Consolidated Merchandising Co. et al.	R70/4168, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles—Long Beach Solid-state (tubeless) radio receivers, or combination articles containing such receivers, some with batteries, and/or earphones, and/or other accessories
R74/246	Boe, C. J. June 3, 1974	Consolidated Merchandising Co.	R70/7010	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles—Long Beach Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories
R74/247	Boe, C. J.	Consolidated Mds.	R70/7012,	Constructed value	Set forth in schedule at-	Agreed statement of	Los Angeles—Long

R74/247	Boe, C. J. June 3, 1974	Consolidated Mds. Co. et al.	R70/7012, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles—Long Beach Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories
R74/248	Boe, C. J. June 3, 1974	Consolidated Merchandising Corp.	R70/6883, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles-Long Beach Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories
R74/249	Re, J. June 5, 1974	Balfour, Guthrie & Co., Ltd., et al.	R66/4267, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/250	Re, J. June 5, 1974	Geo. S. Bush & Co.	R59/11278, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/251	Re, J. June 5, 1974	Geo. S. Bush & Co., Inc., et al.	R60/4151 etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/252	Boe, C. J. June 11, 1974	J. E. Bernard & Co., Inc., et al.	R68/6122, etc.	American selling price	Listed in column B (correct value) on schedule attached to order	Judgment on the pleadings	Chicago Diazo salts
R74/253	Re, J. June 11, 1974	Geo. S. Bush & Co., Inc., et al.	R59/16395, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R74/254	Re, J. June 11, 1974	Rafael Ferran Martinez	R58/1657, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Juan, P.R. Japanese plywood
R74/255	Re, J. June 11, 1974	E. J. Griffith & Co., Inc., et al.	R58/17825, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/256	Re, J. June 11, 1974	R. G. Hoblemann & Co., Inc. et al.	R58/5281, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/257	Re, J. June 11, 1974	Matzley Corporation et al.	R58/27154, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/258	Re, J. June 11, 1974	Wilmington Shipping Co.	R60/6303, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood

R74/259	Re, J.	Geo. S. Bush & Co.,	R60/600	Export value:			

R74/259	Re, J. June 13, 1974	Geo. S. Bush & Co., Inc., et al.	R60/600 etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/260	Re, J. June 13, 1974	General Products Co., Wholly Owned Subsidiary of Del Valle, Kahman Co. et al.	R59/9421, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/261	Re, J. June 13, 1974	B. A. McKenzie & Co., Inc.	281691-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/262	Re, J. June 13, 1974	C. T. Takahashi & Co., Inc., et al.	R58/27270, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/263	Re, J. June 13, 1974	Wood Mosaic Industries, Inc., et al.	R59/12065, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/264	Landis, J. June 14, 1974	The American Greiner Electronic, Inc.	R61/20883, etc.	Export value: Invoiced unit values (in Swiss Francs)	Not stated	U.S. v. The American Greiner Electronic, Inc. (A.R.D. 289)	New York Watch timing machines and similar merchandise, and parts thereof
R74/265	Maletz, J. June 18, 1974	Majestic Electronics Corp.	R65/16990	Export value: Invoiced and entered value	Not stated	Majestic Electronics, Inc. v. U.S. (R.D. 11086)	Los Angeles Miscellaneous products (wigs, wiglets, ponytails, etc.)

RULES OF THE UNITED STATES CUSTOMS COURT

Amendments to Rules 14.3(b) and 14.5 have been approved by the Court. The amended rules, effective June 1, 1974, will read as follows (changes indicated by underlineation):

RULE 14.3(b)

(b) Temporary Withdrawal:

(1) Except where restricted by law (28 U.S.C. § 2637(b)), any person may have access to the relevant papers in an action other than entries, invoices and laboratory reports, which shall be available only to the attorney of record or a party to the action.

The clerk may provide copies of accessible papers to any person upon payment of the prescribed fees as set forth in Rule 14.5.

(2) The Chief, Customs Section, Department of Justice, may withdraw the relevant papers in an action to a designated place in his offices for a period not to exceed 30 days: *Provided*, That upon notice from the clerk, such papers shall immediately be returned to the office of the clerk.

(3) Any person, qualified in accordance with paragraph (b)(1) of this rule, may withdraw the relevant papers in an action to a designated place in the offices of the Customs Court or the Customs Section, Department of Justice: *Provided*, That such papers are returned to the office of the clerk no later than the close of business on the same day as they are withdrawn.

(4) Whenever any person withdraws relevant papers in accordance with paragraph (b)(1) of this rule, he shall sign and leave with the clerk a receipt describing the papers so withdrawn and the designated place to which the papers are to be taken.

RULE 14.5 Paragraphs (a) and (b) eliminated; "(c)" deleted before remaining paragraph.

Fee: The clerk shall receive, from the person at whose request photostatic copying of documents is performed, a fee of 25 cents, payable in advance, for each side of the page so photostated.

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